

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
APPENDIX**





74-2455  
IN THE UNITED STATES COURT OF APPEALS  
SECOND CIRCUIT

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Raphael J. Costanzo,  
Plaintiff-Appellant

vs.

B  
P/S  
Appeal Docket No.  
74-2455

Stanley Arron, Visa Therm Products,  
Anna Arron, Anna Arron Executrix of  
Estate of Max Arron,  
Defendants-Appellees.  
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APPEAL FROM THE UNITED STATES  
DISTRICT COURT FOR THE DISTRICT  
OF CONNECTICUT

Honorable Thomas F. Murphy  
(Non-Jury)

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VOLUME II APPENDIX OF PLAINTIFF-APPELLANT  
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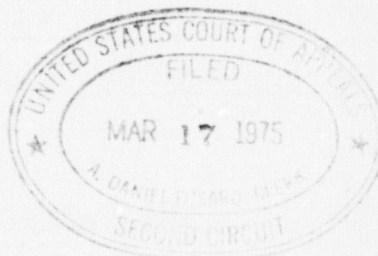
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PLAINTIFF-APPELLANT'S APPENDIX

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1 MR. FATTIBENE: The estate. I understand  
2 the estate --

3 THE COURT: Yes. My question: Is that a  
4 proper name for a defendant, "Estate of Max Arron" or is  
5 it trustee or executor?

6 MR. FATTIBENE: It would be executor or  
7 administrator.

8 THE COURT: Well, I don't know, but why  
9 don't you work it out as to what the right name is, counsel.

10 MR. FATTIBENE: Does counsel know he is  
11 right here?

12 THE COURT: I don't know. Go ahead and do  
13 this during lunch or something.

14 DIRECT EXAMINATION

15 BY MR. FATTIBENE:

16 Q Will you please state your name?

17 THE COURT: He told us his name is  
18 Dennis J. Murphy and he lives in Poughkeepsie.

19 BY MR. FATTIBENE:

20 Q Now, Mr. Murphy, what is your educational  
21 background?

22 A Graduate Electrical Engineer, Chicago Technical  
23 College, Chicago, Illinois. Special courses, plant engineer-  
24 ing, University of Illinois, and some work in aircraft  
25 engines from Aeronautical University, also Chicago, Illinois.

1 Q When did you receive your degree in electrical  
2 engineering?

3 A 1957.

4 Q And after you graduated from college, did you go  
5 into industry?

6 A Yes. I did.

7 Q What is your professional and industrial experi-  
8 ence?

9 A After leaving school, I went to work for  
10 Northern Electric Company, Chicago, Illinois as an engineer  
11 and rose up to senior project engineer and chief product  
12 engineer for that firm. After leaving that firm, I went to  
13 work for Standard Kolesman Industry, Casco Products subsidiary  
14 in Bridgeport, Connecticut and worked there from 1961 to  
15 1965, various capacities, one of which was supervisor,  
16 control device engineering. In 1965, I went to work for  
17 Excelsior Beacon Corporation, Beacon, New York, and was with  
18 them through December 1972. While there, I was president  
19 and general manager of that firm.

20 Q Now, did you give the dates as to when you were  
21 employed by Northern Electric?

22 A 1957 to 1961.

23 Q And what were your duties and responsibilities  
24 when you worked for Northern Electric?

25 A I was chief product engineer. I was responsible



1 for a number of items manufactured by Northern Electric,  
2 such as electric blankets, electric heating pads, electric  
3 socks, electric curling irons, baby bottle products,  
4 sterilizers, baby bottle warmers, both battery operated and  
5 line voltage type and O.E.M. products, products that we made  
6 for original equipment manufacturers. Now, in this position,  
7 supervised a group of engineers, designers and draftsmen in  
8 the design, development and production of these products.

9 Q Now, how did Northern Electric rank as far as  
10 manufacturers of electric socks at that time?

11 THE COURT: How did they what?

12 MR. FATTIBENE: How did they rank --

13 THE COURT: Rank?

14 MR. FATTIBENE: -- as manufacturers of  
15 electrical battery operated socks?

16 THE WITNESS: During part of this period,  
17 they were the only manufacturer of them and, of course, the  
18 largest.

19 BY MR. FATTIBENE:

20 Q Now, did you have a title at that time? What was  
21 your title?

22 A During part of this time, I was chief product  
23 engineer.

24 Q And did the electric socks that they manufactured  
25 come within this area?

1 A Yes. They did.

2 Q In other words, you were chief product engineer  
3 of the electric sock manufacturer?

4 A Yes. It would fall under my jurisdiction.

5 Q Now, what duties and responsibilities did you  
6 have at Casco during your employment there?

7 A As I said before, they were varied. During part  
8 of this time, I was supervisor of control device engineering,  
9 and this encompassed control devices, electric blankets,  
10 heating pads, sinus masks and the like.

11 Q Now, what were your duties and responsibilities  
12 at Excelsior-Beacon?

13 A I was president and general manager of this firm.

14 Q And what did Excelsior-Beacon make?

15 A They manufactured electrical heating pads,  
16 electric socks, electric mitts, electric shirts, warming  
17 trays. I believe that's it.

18 Q Were you one of the principal owners of Excelsior-  
19 Beacon?

20 A Yes. I was.

21 Q Now, did you mention that Excelsior-Beacon made  
22 electric socks?

23 THE COURT: Yes. He did.

24 THE WITNESS: Yes. I did.

25 Q For whom was that product made?



1           A       Manufactured the electric socks for Timely  
2 Products Corporation in Fairfield, Connecticut.

3           Q       And is Excelsior-Beacon still making the electric  
4 socks for Timely Products?

5           A       No. They are not.

6           Q       How long did Excelsior-Beacon make electric socks  
7 for Timely Products?

8           A       About five years.

9           Q       Did you actively engage in any aspects of the  
10 manufacture of the electric socks while you were in  
11 Excelsior-Beacon?

12          A       Yes. I did.

13          Q       Is Excelsior-Beacon, apparently, currently in  
14 business?

15          A       No.

16          Q       What happened to the business of Excelsior-Beacon?

17          A       Retired in December of '72, I did.

18          Q       What is your present occupation?

19          A       Consultant.

20          Q       Now, are you currently employed by the plaintiffs?

21          A       No. I am not.

22          Q       Are you doing any business with the plaintiffs?

23          A       No. I am not.

24          Q       All told, how long would you say you were actively  
25 engaged in the design and development of electric socks and

1 related equipment?

2 A Sixteen years.

3 Q Have you during this period of time made any  
4 efforts to improve the products that came within your scope  
5 of employment over this period of time?

6 A Oh, yes. Concentrated efforts were made while I  
7 was at Northern Electric to improve the product. This was  
8 a normal function of any engineering department and, of  
9 course, after we started manufacturing the product for  
10 Timely Products, we again endeavored to prove the product.

11 Q Did you ever secure any patents in your own name  
12 with respect to any improvements that you had made to products  
13 during this period of time?

14 A Yes.

15 Q Now, can you briefly describe the subject matter  
16 of these patents which you secured?

17 THE COURT: I don't know how this is going  
18 to help me.

19 MR. FATTIBENE: Well, it all goes to his  
20 expertise and qualifications as an expert in this area.

21 THE COURT: The man is an engineer of some  
22 years experience, he worked with three or four companies over  
23 a period of 16, 17, years, he owned a company. What do you  
24 want to do?

25 MR. FATTIBENE: Well, I thought that the



more expert I can make this witness, I think the more probative his testimony is going to be.

THE COURT: Well, if you think it will help me, go ahead.

Q Have you secured patents?

A Yes.

Q Now, do you know when Northern Electric produced its first battery operated sock?

A This is to the best of my knowledge, Your Honor. 1953, the first sock was developed by Northern Electric.

Q Now, can you describe the construction of that sock?

A Yes. To begin with, it is a so-called large battery type sock. It has two lantern batteries secured at the waist, from these batteries leads run down the trousers and snap to the top of the sock. Wires are then led down the side of the sock to a heated sole portion and this heated sole portion is sewn in a zig-zag pattern is the best way I can describe it. A special wire -- this wire we normally call blanket type wire. This is an alloy wound around a Fortison core and over this they extrude a poly-vinyl covering and this is the general language. This sock is manufactured --

Q How many volts were required of the battery source that --

1 A These are a pair of six volt batteries, lantern  
2 batteries.

3 Q Now, do you know how Northern Electric originated  
4 this particular sock that you described?  
5

6 A The story goes --

7 THE COURT: No. I think that is going to  
8 be hearsay, isn't it?

9 MR. FATTIBENE: Well, I don't know. He may  
10 have first-hand knowledge.

11 THE COURT: He may have, yes, but he said  
12 "The story goes", and that sounds like hearsay to me.

13 MR. FATTIBENE: Well --

14 THE COURT: Maybe he has first hand knowledge.  
15 Do you?

16 THE WITNESS: In that the individual who  
17 developed the sock told me how it was arrived at. Other  
18 than that, I was not there in 1953, Your Honor.

19 THE COURT: My guess was right, I guess.

20 MR. FATTIBENE: Yes.

21 Q Now, how long did Northern Electric manufacture  
22 this sock that you described?

23 A As I said, from 1953 through 1972. To the best  
24 of my knowledge, this is the period.

25 Q Do you know if this Northern Electric sock which  
you described is still being sold?



1           A       To the best of my knowledge, it is no longer  
2 being manufactured. Whether it is being sold, it would  
3 depend upon the number of pieces that are out in the retail  
4 level.

5           Q       Now, I believe you said you were product develop-  
6 ment engineer.

7           THE COURT: Well, let me just interrupt.  
8 Are you going to connect this with some of the prior art  
9 that the Patent Office considered or not?

10          MR. FATTIBENE: Yes. It will be connected,  
11 Your Honor.

12          THE COURT: All right.

13          Q       Now, you indicated that you supervised development  
14 and manufacture at Northern Electric. Did Northern Electric  
15 have an engineering staff to design or develop products for  
16 them?

17          A       Yes. They did.

18          Q       Now, did this staff report to you?

19          A       Part of them did, yes.

20          Q       Now, can you tell me what the make-up of this  
21 engineering staff was, the type of people that were employed  
22 on this staff and how many?

23          A       Well, basically, they had -- on the engineering  
24 level, they had two tool engineers, two industrial engineers,  
25 six project engineers, one chief product engineer, one

1 assistant director, and one director of engineering, and  
2 they had two tool designer draftsmen, and it depends, at  
3 various times, say four product designer draftsmen, three  
4 to four lab technicians. This, basically, was the corporate  
5 level engineering staff.

6 Q And where was this staff located?

7 A Chicago, Illinois.

8 Q And where did Northern Electric manufacture its  
9 electric socks?

10 A In Chicago, Illinois.

11 Q Now, can you detail a little more specifically  
12 what the functions of this engineering staff was and what  
13 they were supposed to do?

14 A Well, basically, the engineering staff handled  
15 all the technical aspects of the products, the full range  
16 of products manufactured by the company, and at any given  
17 time, a project engineer would be assigned a specific project  
18 on a product such as the improvement of the battery carrier  
19 on an electric sock or an improvement of a blanket control,  
20 whatever, and at all times we had, well, weekly engineering  
21 meetings, and at these times we discussed the products, what  
22 we could do to improve them and so on.

23 Q You said these were weekly engineering meetings.  
24 Who attended these meetings? Can you tell us that? The  
25 entire staff?



147.

1 A All the engineers.

2 Q Was the subject of the battery operated sock that  
3 Northern Electric was manufacturing at the time discussed at  
4 some of these meetings?

5 A Oh, yes. Every product had to be discussed at  
6 some time.

7 Q Now, during this period of time, did Northern  
8 Electric institute any improvements to the lantern type or  
9 battery operated sock you were making?

10 A Yes. They did.

11 Q What were some of the improvements that they  
12 instituted while you were there?

13 A Well, they improved the heater assembly; of course,  
14 they improved the battery pouch; improved the electrical  
15 connections, the snaps; and, of course, we endeavored to  
16 improve many other aspects of the socks. Some of them were  
17 not successful.

18 Q Now, I show you plaintiffs' exhibits which we  
19 will mark for identification as Plaintiffs' Exhibit 506 if  
20 we can, Your Honor.

21 (Batteries marked Plaintiffs' Exhibits 506  
22 and 506 A, respectively, for identification.)

23 Q I will ask you if you can identify these exhibits  
24 that have been marked as Plaintiffs' Exhibits 506 and 506 A?

25 A Yes. They are lantern batteries of the type that

1 would be normally used in the Northern type sock that we  
2 just discussed.

3 Q And how many volts is each one of those batteries,  
4 exhibits 506 and 506 A?

5 A These are six volts lantern batteries.

6 Q Each?

7 A Each. That is correct.

8 Q And how many of those were required to energize  
9 the sock that Northern Electric manufactured?

10 A Two.

11 THE COURT: I guess one would be the right  
12 answer?

13 THE WITNESS: Two.

14 THE COURT: He used the word "sock".

15 THE WITNESS: It would be two. The battery  
16 pouch could not be used independently the way they manufac-  
17 tured it. In other words, the snap came into a terminal.

18 THE COURT: Are you suggesting that each  
19 sock required two batteries?

20 THE WITNESS: No. No. Each pair required  
21 two batteries, Your Honor.

22 THE COURT: The question was in the singular.

23 THE WITNESS: All right. I correct my  
24 answer.

25 Q Well, let me ask you this question: Where were



1 these lantern batteries carried?

2 A In a pouch on the belt of the user.

3 Q All right. And how were the batteries connected  
4 in circuit to the heaters in each of the socks?

5 A Each battery was connected in series to it or  
6 each battery was in series with a single heater.

7 Q I see.

8 MR. FATTIBENE: I would like to offer these  
9 exhibits 506 and 506 A, Your Honor.

10 THE COURT: You can if you wish. I think I  
11 should be able to recall that it is a six volt battery  
12 without putting them in the record. I take it they are not  
13 the batteries that they used at the time. They are just  
14 similar, are they not?

15 THE WITNESS: They are similar batteries,  
16 yes, Your Honor.

17 THE COURT: But if you want to put them in  
18 evidence --

19 MR. FATTIBENE: Well, I think in case you  
20 want to make a comparison with what went before with what  
21 came later. I think it is important.

22 THE COURT: Counsel, put them in if you  
23 wish. Show them to counsel.

24 (Batteries received and marked Plaintiffs'  
25 Exhibits 506 and 506 A as full exhibits in evidence.)

1 THE COURT: Excuse me, counsel. I don't  
2 wish to appear to be impatient, but maybe I am. Is the  
3 testimony that this gentleman is now giving going to relate  
4 to some patent that the electric company out in Chicago was  
5 using?

6 MR. FATTIBENE: Well, Your Honor --

7 THE COURT: If the answer is "No", let's  
8 get on. If the answer is "Yes", that will take of me too.

9 MR. FATTIBENE: No. It is not related to  
10 any patent.

11 THE COURT: Well, what is the purpose then?  
12 Is it to show the competency of the people who worked for  
13 him?

14 MR. FATTIBENE: Right, and also the state of  
15 the prior art because this was prior known art. Although it  
16 was not patented, it was known. They had been on sale ever  
17 since 1950.

18 THE COURT: It wasn't patented?

19 MR. FATTIBENE: It was not patented, to my  
20 knowledge. At least, there is no evidence of it being  
21 patented, but it was definitely prior knowledge and existing  
22 art.

23 THE COURT: All right.

24 Q Now, did Northern Electric at any time attempt  
25 to make a different type of battery operated sock?



1 A Yes. In 1960 through one of these engineering  
2 meetings, why, the suggestion was made of going to a  
3 rechargeable type pair of socks and the project was started  
4 at that time to look into the feasibility of rechargeable  
5 battery circuit in an electric sock.

6 Q Now, was there any change in the construction of  
7 the sock body and heater itself with this new development  
8 that they were contemplating?

9 A Other than redesigning the heater, the sock  
10 itself was not radically changed. It was basically the same  
11 sock. The case for the battery, of course, would have to be  
12 obviously different to accommodate the rechargeable battery.

13 Q Now, do you know when Northern Electric introduced  
14 the rechargeable battery heated sock on the market?

15 A I believe it was 1970 that they introduced the  
16 rechargeable battery on the market.

17 THE COURT: I take it you were out in  
18 Chicago by then?

19 THE WITNESS: That is true.

20 THE COURT: And I take it also that the  
21 change was merely the rechargeable battery? You say the  
22 design of the sock remained the same?

23 THE WITNESS: Basically. The heater had to  
24 be changed somewhat because of different voltages involved,  
25 yes.

1 Q Now, prior to September 13, 1965, which was the  
2 filing date of the Costanzo patent, did you know of any  
3 other companies who were manufacturing electrically heated  
4 socks, battery operated?

5 A You say prior to the --

6 Q September 13, 1965?

7 A Yes. There was an outfit out in Chicago known  
8 as Kimco, started by a former Northern Electric employee,  
9 that was manufacturing the same type of sock.

10 THE COURT: Same type as?

11 THE WITNESS: As the Northern, the lantern  
12 battery type, Your Honor. And sometime after that another  
13 outfit known as Burnham came onto the market with the same  
14 type of sock.

15 Q Well, can you be a little more specific as to  
16 the construction? Were they virtually identical?

17 A Virtually identical. In fact, on the Kimco, parts  
18 were interchangeable.

19 MR. FATTIBENE: Now, I would like to mark  
20 an exhibit, Plaintiffs' Exhibit PX 325 for identification.

21 (Pouch and sock - grey marked Plaintiffs'  
22 Exhibit PX 325 for identification.)

23 Q I show you Plaintiffs' Exhibit PX 325 marked for  
24 identification and ask you if you can identify it?

25 A It is a so-called large lantern battery type sock



1 and pouch similar to that manufactured by Northern Electric,  
2 Kimco and Burnham.

3 Q Now, have you ever seen that type of sock before?

4 A Yes.

5 Q Have you ever had occasion to examine it and  
6 study a sock of the type identified as PX 325?

7 A Yes.

8 Q Now, do you know when that sock was first  
9 introduced into the United States?

10 A I would have to say somewhere in the area of  
11 1968 to -- '66 to '68. I could not be exact on the date.

12 Q Now, can you demonstrate for the Court how  
13 PX 325 is required to be worn?

14 A You want me to put the whole --

15 Q Well, I think just demonstrate for the Court the  
16 mechanics of putting this sock on.

17 A You want me to place the sock on my foot?

18 Q Well, I don't think that is really necessary.

19 A The sock is placed on and before you put on your  
20 trousers, you have got to drop the leads down each trouser  
21 leg.

22 Q You have to take your trousers off first?

23 A Well, unless you want to fool around pulling them  
24 down through, snapping them to the top of the sock with the  
25 snaps. The snaps are located in the top. These are snapped

1 right in place, and after you put your trousers on, you  
2 slip the pouch itself onto your belt. After you get the  
3 pouch on the belt, then you drop the two lantern batteries  
4 in and zip it up.

5 Q And as soon as the top is closed, is the battery  
6 connected electrically to the heaters themselves?

7 A If you have this plug connected, yes. (indicating)

8 Q So there is a plug involved?

9 A There is a plug that hooks on the belt also, yes.

10 Q Now, have you examined the construction of  
11 PX 325 in detail?

12 A Yes.

13 Q What type of heater is employed in Exhibit  
14 PX 325?

15 A Well, we call it generally the Northern type sole  
16 heater using the blanket type wire.

17 Q Now, is the construction of Exhibit 325 similar  
18 to the lantern battery type Northern Electric sock you  
19 described?

20 A Yes.

21 Q Now, is PX 325 also similar to the construction  
22 of the Kimco lantern battery you described?

23 A Yes.

24 Q And is the heater -- is the construction of  
25 PX 325 also similar to the construction of the Burnham



1 lantern battery sock you described?

2 A Yes.

3 Q I show you a couple of batteries and ask you if  
4 you can identify them. Oh, these are not marked as exhibits  
5 for identification. I would like to mark them. We don't  
6 have a number for these. Give them 506 B and C.

7 (Two batteries marked Plaintiffs' Exhibits  
8 506 B and 506 C, respectively.)

9 Q I show you exhibits that have been marked  
10 Plaintiffs' Exhibits 506B and 506 C and ask if you can  
11 identify them?

12 A Yes.

13 Q Will you please identify them?

14 A They are alkaline D cells, one and a half volts  
15 each. These particular two are manufactured by Eveready.

16 Q Now, Plaintiffs' Exhibits 506 B and C which you  
17 have just identified, are they capable of energizing the  
18 heater in the lantern type battery socks which you described  
19 as evidenced by Plaintiffs' Exhibit 325?

20 A No.

21 MR. FATTIBENE: I would like to offer these  
22 exhibits 325 and 506 B and C into evidence, Your Honor. I  
23 would like to offer PX 325 as Exhibit Number --

24 THE COURT: We better keep the same numbers  
25 or else we are going to be confused. Is it going to conflict

1 with something else?

2 MR. FATTIBENE: Same numbers.

3 THE COURT: 325 received.

4 (Pouch and Sock - grey received in evidence  
5 and marked Plaintiffs' Exhibit 325.)

6 THE COURT: Any objections to the two  
7 batteries, 506 B and C?

8 (No response)

9 THE COURT: I take it there isn't.

10 MR. KUNIN: No objection.

11 (Two batteries received in evidence and  
12 marked Plaintiffs' Exhibits 506 B and 506 C, respectively.)

13 Q Now, did the lantern type batteries which you  
14 described as being the manufacturers Northern Electric,  
15 Kimco and Burnham and the Jap Hunter have any apparent --

16 THE COURT: I didn't hear the word "Hunter"  
17 in the case so far.

18 MR. FATTIBENE: I thought he identified  
19 325 as a Hunter.

20 THE COURT: He said, my recollection is,  
21 that it was introduced into the United States sometime be-  
22 tween the period 1966 and '68. Did you describe it as a  
23 Hunter or not?

24 THE WITNESS: No, but it is a Hunter type  
25 sock.



1 THE COURT: Hunter type sock?

2 THE WITNESS: Yes.

3 Q Do you have an identification for Exhibit 325?

4 A That appeared to be a Japanese import similar to

5 --

6 Q You just identified it as a Japanese import?

7 A Yes. Hunter sock, Japanese import. I just did  
8 that now, not before.

9 MR. KUNIN: Excuse me, Your Honor. Just  
10 as a clarification, that is neither a Burnham, a Kimco or  
11 a Northern Electric; is that right?

12 THE WITNESS: No. It is not. It is a  
13 Japanese sock.

14 MR. KUNIN: I see. I didn't understand  
15 that.

16 Q Now, did the lantern type battery sock which you  
17 identified as Northern Electric, Kimco, Burnham and the  
18 Japanese import Exhibit 325, did they have any apparent  
19 disadvantages?

20 A Yes.

21 Q What were the readily apparent disadvantages?

22 A Weight, lack of mobility because of the wires  
23 that were strung from the battery pouch to the sock itself;  
24 expense, they were quite expensive; difficult to manufacture.  
25 They also exhibited problems in the field, poor connections,

1 the inability to adapt the circuitry to accommodate a six  
2 foot seven versus we will say a four foot eight individual.  
3 You either had too much wire or not enough. Those were  
4 some of the obvious disadvantages.

5 Q Now, what was the cost of one of those lantern  
6 battery socks; do you know?

7 A Oh, it ran anywhere from 14.95 to 16.95 is my  
8 recollection.

9 Q And this is without the cost of the batteries?

10 A That is without the cost of the batteries.

11 Q And what would be the price of the batteries?

12 A Oh, anywhere from 90 cents to \$1.60, \$1.70,  
13 depending on time and where they were purchased.

14 Q Is this each?

15 A Each.

16 MR. FATTIBENE: All right. I would like to  
17 mark Exhibit 503 for identification.

18 (Sock marked Plaintiffs' Exhibit 503 for  
19 identification.)

20 Q I show you Exhibit 503 and ask you if you can  
21 identify it?

22 A It appears to be a Northern Electric rechargeable  
23 type electric sock.

24 Q Have you ever seen that type of sock before as  
25 indicated by Exhibit 503?



1 A Yes. I have.

2 Q Have you ever had occasion to examine the con-  
3 struction of Plaintiffs' Exhibit marked for identification  
4 503?

5 A Yes. I have.

6 Q Now, can you demonstrate to the Court how  
7 Exhibit 503 marked for identification is worn?

8 A The wires again must be dropped down through the  
9 trouser legs or put on prior to donning the trousers. And,  
10 of course, the connector is snapped to the top of each sock  
11 after this sock is donned and the center snap is brought up  
12 and held at the belt area while the pouch is donned over the  
13 shoulder like so, (indicating), and then the center snap is  
14 snapped to the side of the battery. This energizes the  
15 socks at this time.

16 Q Now, what type of power supply is utilized in  
17 Exhibit 503 marked for identification?

18 A It is a seven and a half volt rechargeable  
19 alkaline type cell.

20 Q And what are some of the physical characteristics  
21 of that type of power supply?

22 A Well, it does not make a good type of power  
23 supply because the life of the battery is extremely limited.  
24 Under maximum conditions, you can only get eighteen to twenty  
25 recharges, and if you allow the battery to completely

1 discharge, you will not be able to bring it back at all.  
2 This particular battery, they recommend a maximum of three  
3 hours usage and the minimum of fourteen hours of recharge  
4 time after this usage which indicates, basically, that a  
5 wearer can wear it for three hours in any one twenty-four  
6 period in practice.

7 Q And what is the cost of that type of battery?

8 A To the best of my recollection, it is about six  
9 and a half dollars.

10 Q Now, what are some of the apparent undesirable  
11 features of Exhibit 503 which has been marked for identifi-  
12 cation?

13 A Well, as I said, the short life of the battery  
14 and, obviously, the high cost of replacing, plus the fact  
15 that you have got to be very careful about discharging this  
16 battery because if you completely discharge it, that is it,  
17 you are through the first time out; and, of course, it has  
18 all the other inherent disadvantages of the large lantern  
19 battery sock, that is, the cumbersome wires. Again, an  
20 exceedingly tall man or a very short man, either he does not  
21 have enough wire or he has way too much.

22 Q Now, have you examined the heater construction  
23 in Exhibit 503 marked for identification?

24 A Yes. It is made with the, again, blanket type  
25 wire. This time because of the different type of batteries,



1 they have redesigned the heater so that, basically, the  
2 heat is located in the toe area versus the entire sole area  
3 as they had it before.

4 Q Now, do you know what the average annual sales  
5 were of the Northern Electric lantern type battery?

6 A That is difficult to recall at this time. I do  
7 recall that the best year manufacturing was about thirty  
8 thousand units, and this does not necessarily mean that they  
9 were selling thirty thousand units because we produced socks  
10 for inventory, shut the line down, and then something else went  
11 in that particular line again so we build to a schedule and  
12 if the sales department wanted twenty-two thousand units in  
13 stock, we took, obviously, what we had in stock, subtracted  
14 it and then built what we needed, but --

15 THE COURT: And what year are you talking  
16 about when you say that the best year was thirty thousand  
17 units manufactured?

18 THE WITNESS: It would be either 1958 or  
19 1959, Your Honor.

20 MR. FATTIBENE: I would like to mark  
21 Exhibit 503 marked for identification as a full exhibit,  
22 Your Honor.

23 THE COURT: 503 received. All right.

24 (Sock received in evidence and marked  
25 Plaintiffs' Exhibit 503.)

1 Q Now, do you know when Exhibit 503 was first  
2 introduced on the market for sale?

3 A That particular sock you are referring to?

4 Q Yes.

5 A In the year 1970 is the best of my knowledge.

6 THE COURT: Is this going to be connected  
7 with your patent?

8 MR. FATTIBENE: Well, hopefully. What I am  
9 trying to do is establish what those skilled in the art were  
10 doing and thinking which are all facts that have to be  
11 considered.

12 THE COURT: Oh, indeed, that is quite  
13 relevant, but I would guess it has something to do with the  
14 year 1965?

15 MR. FATTIBENE: Pardon?

16 THE COURT: I would guess that that skill  
17 that you are talking about relates to the year of Our Lord  
18 1965?

19 MR. FATTIBENE: Yes, but I think he testified  
20 that this concept was created --

21 THE COURT: No. He said it was discussed --

22 MR. FATTIBENE: Well, that is what I mean.

23 THE COURT: -- at some of the meetings.

24 MR. FATTIBENE: At some of the meetings. So  
25 I just want to point out the length of time that it takes



1 for a company such as Northern Electric --

2 THE COURT: Well, maybe they were sitting  
3 on their butt too long.

4 MR. FATTIBENE: Well, this is a possibility.

5 Q Were there any customer objections to the  
6 Northern Electric lantern type battery?

7 A Oh, yes.

8 THE COURT: What are we talking about now?  
9 Which one? The last one or the one --

10 MR. FATTIBENE: Well, we don't have an  
11 exhibit of the Northern Electric type.

12 THE COURT: All I want to know is which one  
13 we are talking about, when this gentleman was connected with  
14 that company?

15 MR. FATTIBENE: When he was connected, yes.

16 THE COURT: And I forget the years. You  
17 told us sixty --

18 THE WITNESS: That would be 1957 to 1961,  
19 Your Honor.

20 THE COURT: Between those years, 1957 through  
21 1961, was there some customer reaction to your --

22 MR. FATTIBENE: Yes.

23 THE COURT: Do you recall what the customer  
24 reaction was?

25 THE WITNESS: Yes. I do. There were many

1 complaints as with any product, but the ones that stand out  
2 in my mind were the particularly vocal customers, as far as  
3 the wires being too short. This man was in the neighborhood  
4 of six foot seven and found it absolutely impossible to wear  
5 the product. We also had instances where customers complained  
6 about the excessive wire because they were too short. We  
7 have had complaints about the life of the batteries versus  
8 the cost to replacing them. We did have some problems with  
9 electrical connections, as I stated before, and snaps, and  
10 this was a continuing project to improve these. They intro-  
11 duced high resistance in the circuit and did cause problems.

12 Q Now, subsequent to December 13, 1965, did you  
13 become aware of any other type of the electrically heated  
14 socks that were battery operated?

15 A Yes. I did.

16 Q Can you identify them by the manufacturer?

17 A I became familiar with the sock manufactured for  
18 Timely Products at that time by Casco Products, and subseq-  
19 uently I became acquainted with the sock manufactured by  
20 Visa-Therm.

21 Q Now, can you generally describe each of these  
22 socks which you have identified?

23 A Well, they are wholly self-contained, low voltage  
24 electrically heated socks utilizing, oh, a volt and a half  
25 D type cells.



1 165.  
2 "Filed September 13, . . . "

3 MR. KUNIN: Your Honor, I object.

4 THE COURT: That is so obvious, Counsel.  
5 The Exhibit is in evidence.

6 Q Now, does the patent state specifically what the  
7 subject matter was in a brief statement?

8 MR. KUNIN: Your Honor, again --

9 THE COURT: Counsel, this is all in black  
10 and white. It has the claims and everything else in it.

11 MR. FATTIBENE: I thought maybe the Court  
12 would -- there are some areas of expertise here that have  
13 to be discussed.

14 THE COURT: Yes. I appreciate that.

15 MR. FATTIBENE: So I was just trying to  
16 develop the features and the objectives that the --

17 THE COURT: Why don't you do just that?

18 MR. FATTIBENE: Pardon?

19 THE COURT: Why don't you do just that?

20 Q Now, does Costanzo describe in his patent what  
21 was the prior state of the art known to him prior to his  
22 filing?

23 A Yes. He does.

24 Q What was the state of the art that Costanzo --

25 THE COURT: Well, I think if he just tells  
me the page and line that he is going to read to us, we will

1 all read it silently, I guess.

2 Q Will you point out to the Court where Costanzo  
3 describes the state of the art?

4 A It would be paragraphs 2 and 3 of column 1,  
5 Your Honor.

6 THE COURT: Yes. Go ahead.

7 Q Now, would you say that the description as stated  
8 in paragraphs 2 and 3 of column 1 represent a reasonably  
9 accurate representation of the art as it then existed?

10 A I believe so.

11 Q Would you say that the description of the prior  
12 art as indicated in paragraphs 2 and 3 make any reference  
13 to the Northern Electric sock construction which you  
14 described?

15 MR. KUNIN: Your Honor, I don't believe the  
16 witness has been qualified as an expert on prior art of the  
17 sock patent. I mean, he is an electrical engineer, apparently.

18 THE COURT: I don't quite follow your  
19 objection. You say he doesn't have the qualifications to  
20 answer the question?

21 MR. KUNIN: Well, I don't know how familiar  
22 he is with the prior art other than that he worked for  
23 Northern Electric.

24 THE COURT: Well, the question was limited  
25 to Northern Electric. The question was: Does the



1 description describe the article manufactured by Northern  
2 Electric? Isn't that the question? I thought it was.

3 MR. FATTIBENE: Yes, Your Honor. That was  
4 the question.

5 THE COURT: Do you understand it?

6 THE WITNESS: Yes, sir.

7 THE COURT: Yes. And the answer is?

8 THE WITNESS: Yes. It does.

9 THE COURT: It does describe it?

10 THE WITNESS: Yes.

11 Q Will you point out specifically where that  
12 reference is in the patent?

13 A I would say all of paragraph 3, really.

14 Q Now, does Costanzo express what the objectives  
15 were that he was trying to achieve by the invention disclosed  
16 in Exhibit 1?

17 A Yes.

18 Q Will you point out what objectives Costanzo was  
19 attempting to achieve?

20 THE COURT: Well, they are right in the  
21 patent there. Do you want him to refer to the line number  
22 or what?

23 MR. FATTIBENE: Yes.

24 THE WITNESS: I would have to say line 55  
25 to 70 of column 1 and line 1 through 10 of column 2.



1 Have you finished?

2 THE WITNESS: Yes.

3 Q Well, before we get into that line of questioning,  
4 I would like to go back to the Costanzo construction.

5 THE COURT: To what?

6 Q I would like to go back to the Costanzo construc-  
7 tion. Can you point out to the Court the differences between  
8 the Costanzo construction as described in this patent and  
9 the lantern type batteries which you described and was  
10 identified by Exhibit 325?

11 A Can I point out the differences?

12 Q Yes.

13 A Well, looking at the drawing here, Figure 1, if  
14 we are talking now, the lantern type battery had an inner  
15 sole sewn to the bottom, it heated the entire ball of the  
16 foot area.

17 Q Would it help if you were referring to Exhibit  
18 325 in this comparison?

19 A Yes. It would.

20 THE COURT: Well, 325 is the Japanese, is it?

21 MR. FATTIBENE: Yes, but he testified that  
22 that was typical of all the lantern types as made by Kimco,  
23 Burnham and Northern Electric.

24 THE COURT: Yes. But I thought your question  
25 was directed to a comparison between the construction of

1 Exhibit 7 or Plaintiffs' --

2 MR. FATTIBENE: No. No. I am going back to  
3 the Costanzo construction.

4 THE COURT: The difference between the  
5 Costanzo construction in the patent?

6 MR. FATTIBENE: In the patent.

7 THE COURT: Yes.

8 MR. FATTIBENE: With respect to the large  
9 lantern type battery operated socks as evidenced by  
10 Exhibit 325 and those others that were described as being  
11 similar, namely, those of Northern Electric, Burnham and  
12 Kimco.

13 THE COURT: Yes. All right.

14 THE WITNESS: So that the lantern type used  
15 a heated inner sole located in the ball area of the foot.  
16 So the inventor has a unique heater located in the most  
17 efficient position which is in the toe area. Secondly, the  
18 inventor incorporated the use of a smaller power supply, in  
19 this case, a one and a half volt D cell as an integral part  
20 of the sock assembly, so it was wholly self contained and did  
21 not require the wires running up to a battery pouch at the  
22 belt. And these are the two most salient features in this  
23 patent versus the lantern style. The more efficient heater,  
24 coupled to the self containment, that is, the battery located  
25 in the pouch at the top of the sock.



1 Q Were there any other noticeable advantages or  
2 differences between the two constructions?

3 A Oh, yes. From the standpoint of manufacture, it  
4 was much easier and less expensive to manufacture this than  
5 obviously this (indicating).

6 Q Well, when you say "This", you are referring to  
7 Plaintiffs' --

8 A The lantern.

9 Q -- Exhibit 325?

10 A That is correct. Exhibit 325. You have to  
11 forgive me, Your Honor. I keep forgetting to use the numbers.  
12 So it is much easier to produce a sock of this type than one  
13 of this and less expensive (indicating).

14 Q You are referring to the Costanzo construction  
15 when you say "This" --

16 A Yes.

17 Q -- as compared to PX 325?

18 A That is correct.

19 Q Now, what other apparent or obvious advantages  
20 are there to the Costanzo construction versus the lantern  
21 type battery as evidenced by 325?

22 A Of course, the advantages to the wearer are the  
23 mobility, it allows him the ease of donning or wearing the  
24 sock and, of course, less expensive to purchase and less  
25 expensive to operate.



1 Q Now, what would a skier have to do to wear the  
2 lantern type battery such as Exhibit 325?

3 A Well, this is what the sock was originally  
4 designed for. It is a hazard on ski slopes. Anyone tending  
5 to fall on this battery pouch could be seriously injured.

6 Q Also, what about the relationship of the wires to  
7 the ski pants?

8 A Well, of course, they would have to go down inside  
9 the pants. When anyone who wore it -- by the way, anyone  
10 who wore the sock on the outside of their pants --

11 Q You are referring to PX 325?

12 A Right. -- on the outside of the pants, would  
13 have to run the wire down inside the pants, bring it back  
14 up and connect it to the top of the sock and it is very  
15 difficult. The same is true in a skier. He would either  
16 have to have the wire down inside the ski pants or have it  
17 trailing in the wind, it would get caught in twigs or brush.

18 Q Now, did the Costanzo construction also obviate  
19 this customer objection to the long wire for long and short  
20 people?

21 A Obviously, since there was no wire connecting the  
22 sock to the belt, the size of the wearer was of no consequence.

23 Q Can you think of any other advantages attributed  
24 to the Costanzo construction versus PX 325? For example,  
25 what would be the cost that a consumer would pay for a sock

1 embodying the Costanzo construction?

2 A As I testified earlier, typically, a sock of this  
3 type would retail from 14.95 -- I am talking --

4 Q PX 325?

5 A PX 325, this type would retail from 14.95 to  
6 16.95 and whereas a sock of this type would retail at 9.95  
7 (indicating).

8 Q The Costanzo construction?

9 A Costanzo construction, right.

10 Q And what would that retail for?

11 A 9.95.

12 Q How about the cost of the batteries?

13 A Well, in point of time, battery costs have varied  
14 greatly. Alkaline cells, they have varied over the years  
15 from approximately sixty-five cents retail to a dollar, now  
16 currently a dollar suggested retail.

17 Q So, in your opinion, what would be the inventive  
18 concept which is exemplified by the Costanzo patent?

19 A The fact that it was wholly self contained, had  
20 a heater, an efficient heater located in the toe portion of  
21 the sock. Those were the -- I can say the two most im-  
22 portant.

23 Q Would you explain why the heater of the Costanzo  
24 construction was efficient?

25 A Well, number one, there was less losses than in a



1 heater of the large lantern type, such as PX 325, and the  
2 long wires, of course, would give you line losses from the  
3 pack all the way down to the heater. Secondly, they attempted  
4 to heat the entire foot area rather than the toe portion  
5 and the type of heater constructed that is using blanket  
6 type wire is far from the most efficient. A great amount  
7 of heat loss here (indicating).

8 Q Now, what other features of PX 325 is attributed  
9 to excessive heat losses besides the length of the wires?

10 A The connections, of course. Again, introducing  
11 losses into the circuit.

12 Q So every point of connection, there is a voltage  
13 drop or power loss?

14 A Potential and in practice, it turns out, in fact,  
15 to be a loss.

16 Q Now, can you describe how the heat -- strike  
17 that question.

18 Do you know what portions of the body are  
19 subject to extreme weather temperatures?

20 THE COURT: Well, I am just wondering, do  
21 you feel qualified to answer that from your engineering  
22 experience?

23 THE WITNESS: Studies we made at Northern  
24 Electric, yes, sir. We found that the extremities, of course,  
25 are the most susceptible to the ravages of cold, so to speak.



1 In some people, the circulation is so poor in the foot and  
2 toe portion that they are unable to partake of any winter  
3 sports whatsoever. So until the advent of the electric sock,  
4 were confined indoors or in this type of atmosphere, could  
5 not partake at all.

6 Q Could you then explain again how the heat is  
7 generated and transmitted in the Costanzo construction?

8 THE COURT: I don't know why he should  
9 explain it again if he did it once.

10 MR. FATTIBENE: Well, I thought that the  
11 Court was somewhat confused as to --

12 THE COURT: Oh, I am always confused, counsel.

13 MR. FATTIBENE: I thought maybe another  
14 explanation, a more detailed one might elucidate this point.

15 THE COURT: All right. Try it.

16 THE WITNESS: I will try to be brief, Your  
17 Honor. Again, as we stated before, the entire heat is  
18 generated -- all the heat is generated in the heater element  
19 itself, the resistor element.

20 Q Can you identify it by number on the drawing?

21 A Yes. That is 14, right here (indicating). Now,  
22 as I said before, all the heat must be transmitted to the  
23 covering material by conduction. There is no convection  
24 current and an exceedingly small amount of radiation. To  
25 make it clear to everybody, if we hold a match up and we

1 theory in pointing that out to me. Are you claiming a  
2 patentability with regard to a sock that has a heel and a  
3 toe?

4 MR. FATTIBENE: No, Your Honor. What I am  
5 doing now is showing the infringement and in order to  
6 establish the infringement, I have to show that the defend-  
7 ant's structure is directed to the same combination as set  
8 forth in the claim of the patent, and I am now reading the  
9 Costanzo claim on the defendant's structure to show infringe-  
10 ment, and I have to itemize so the Court will know that this  
11 is an infringement after the expert gets through testifying.

12 THE COURT: Well, as one of the factors in  
13 combination, I suppose I could forget about claim number 1-A.

14 MR. FATTIBENE: I would like to state that  
15 { the defendants are only contending or that only one claim is  
16 in issue and that is claim two.

17 THE COURT: That is why I raise the point  
18 about the question of a sock having a toe and a heel. Your  
19 client doesn't claim he invented the sock?

20 MR. FATTIBENE: No. No. But this is a  
21 combination type of invention, and it is the overall effect.  
22 It is a combination -- what we call in the art a combination  
23 claim that includes these features. Now, admittedly, the  
24 sock as an element is old, but when you relate the other  
25 element to it, it becomes a new animal.



1 THE COURT: Well, the defendant's patent  
2 just says it is a claim for apparel.

3 MR. FATTIBENE: No, Your Honor. I am not  
4 referring to the defendant's patent at this time.

5 MR. JUNKINS: Your Honor, you are talking  
6 about defendant's patent or the plaintiff's patent?

7 THE COURT: I am sorry.

8 MR. JUNKINS: Are we talking about the  
9 Costanzo patent or the Arron patent?

10 THE COURT: He said he is not even talking  
11 about your patent.

12 MR. FATTIBENE: No. I am talking about the  
13 Costanzo claim two.

14 MR. JUNKINS: Which is the plaintiffs'  
15 patent, Your Honor.

16 THE COURT: Yes. I appreciate that. All  
17 right.

18 MR. FATTIBENE: If I can explain to the  
19 Court --

20 THE COURT: We better start again.

21 Q Referring to Exhibit 1 which is the Costanzo  
22 patent, I direct your attention to claim two and ask you to  
23 point out both on Exhibit 8 and in the enlarged blow-up  
24 drawing of Exhibit 8 whether or not those two exhibits  
25 contain in combination a woven sock having a toe portion?



1 run from the pouch down behind the red tape here to the  
2 heater assembly (indicating).

3 Q Now, does Exhibit 8 contain a means maintaining  
4 said conductor against the leg portion of the sock?

5 A Yes. That would be this red tape sewn to the leg  
6 portion of the sock and depicted here in Figure 1 (indicating).

7 Q Now, in view of your study of the defendant's  
8 construction of Exhibit 8 and a study of the Costanzo patent  
9 and a reading of the Costanzo claim two, can you formulate  
10 an opinion as to whether or not the construction of Exhibit 8  
11 infringes the claim two of the Costanzo patent?

12 MR. JUNKINS: Your Honor, we object to that  
13 question on the ground that that is a legal conclusion, that  
14 the question of infringement is a determination to be made  
15 by the Court.

16 THE COURT: That is true, but every expert  
17 I ever heard gives an answer. So I will hear it and you may  
18 have an exception.

19 THE WITNESS: Yes.

20 Q What is your opinion?

21 A I believe that this is an infringement of claim  
22 two of the Costanzo patent.

23 Q Now, is there anything in the Costanzo claim which  
24 limits it to any particular type of covering material?

25 A No. There is no limiting. He gave a preferred

1 A Yes.

2 Q Who was the biggest customer?

3 A Sears-Roebuck and Company.

4 Q And was Northern Electric acquired by the Sunbeam  
5 Corporation?

6 A Yes. It was.

7 Q And when was Northern Electric acquired by the  
8 Sunbeam Corporation?

9 A Somewhere in the 1966 to 1968 area.

10 Q Now, in view of your experience and knowledge of  
11 the manufacture and construction of the six volt lantern  
12 type battery heated sock which you described yesterday as  
13 being manufactured by Northern Electric, Kimco and Burnham,  
14 and in view of your study and explanation of the Costanzo  
15 patented construction, do you have an opinion as to whether  
16 or not the differences between those constructions would  
17 have been obvious to one having ordinary skill in the art at  
18 the time Costanzo made his invention?

19 A Yes. I have an opinion.

20 Q And would those differences in the construction  
21 between the six volt lantern type batteries which you described  
22 and the Costanzo patent construction be obvious to one having  
23 ordinary skill in the art at the time Costanzo made his  
24 invention?

25 A No. It would not have been obvious to one skilled



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1 in the art.

2 Q And what are the reasons for your opinion?

3 A Well, I was personally acquainted with most of  
4 the people who would have been skilled in the art at the  
5 time, and although we all had been working on this problem,  
6 no one had come to the conclusions that Mr. Costanzo did in  
7 his patent.

8 THE COURT: Are you saying that it wasn't  
9 obvious because nobody discovered it? Is that what you said  
10 in substance?

11 THE WITNESS: I would say that what I said  
12 in substance was the people who were skilled in the art at  
13 the time were working actively in this field and were not able  
14 to come up with it. That is correct, Your Honor.

15 THE COURT: May I interrupt a moment?

16 MR. FATTIBENE: Yes.

17 THE COURT: When did these new smaller  
18 batteries become in pretty good circulation?

19 THE WITNESS: To the best of my recollection,  
20 Your Honor, it would be back in the very early sixties. I  
21 would say in the neighborhood of '61, '62.

22 THE COURT: And isn't there a name for those  
23 batteries other than just one and a half volt?

24 THE WITNESS: In particular, battery --

25 THE COURT: Don't they call them some kind of

1 -- is it cadmium or some other?

2 THE WITNESS: There are several different  
3 types of cells that could be used here. The one that was  
4 placed in evidence yesterday was an alkaline cell. Conceiv-  
5 ably, a nickel cadmium cell could also be used. That is a  
6 rechargeable.

7 THE COURT: No. There is another one that I  
8 keep thinking of that you use in flash light batteries that  
9 has a longer life than the ordinary.

10 THE WITNESS: That would be the alkaline cell,  
11 Your Honor.

12 THE COURT: Alkaline?

13 THE WITNESS: Alkaline cell.

14 THE COURT: That is the word I am looking  
15 for. Thank you. And were they available in '62?

16 THE WITNESS: They were available in that  
17 period of time, yes, Your Honor.

18 THE COURT: Thank you. )

19 Q Were D type cell batteries available --

20 THE COURT: I missed the first word.

21 Q Were D cell type batteries which are the one and  
22 a half volt size batteries, were they readily available during  
23 the time that Northern Electric was manufacturing and selling  
24 the large six volt type lantern battery socks?

25 A There were various types of D cells available at



1 cross?

2 MR. JUNKINS: Perhaps another hour, hour and  
3 a half.

4 THE COURT: We will adjourn now until a little  
5 after half past one.

6 I just want to make this observation. So far  
7 in your cross, you don't seem to have touched on the validity  
8 of the plaintiff's patent, am I wrong in that or not, either  
9 by way of obviousness or anything, the elements that the  
10 Statute said determine the validity? Are you purposely  
11 refraining from that or not?

12 MR. JUNKINS: Well, our first position is  
13 that if heat conducting material in claim two means metallic  
14 foils are good heat conductors, we don't use it. We don't  
15 care if the patent is valid or not. There would be no  
16 infringement.

17 Our second position which we will get at a  
18 lit later this afternoon is that if it covers all materials,  
19 then we do feel that there may be an area in which we can  
20 urge non-patentability.

21 THE COURT: Well, I will wait. Thank you.

22 (Court recessed for lunch at 12:40 P.M. and  
23 reconvened at 1:40 P.M.)

24 MR. JUNKINS: Will you please mark these  
25 documents as ZZ-12?

1  
2 MR. KUNIN: Isn't that a contradiction in  
3 terms of --

4 THE COURT: Well, it depends what he means  
5 by relative. Maybe the witness can answer it.

6 THE WITNESS: I have stated before that this  
7 heater would have a gradient. I think that is very early in  
8 my testimony. Now, for any given heater, the gradient, of  
9 course, will vary due to parameters of the circuit and the  
10 construction of the heater, but this heater would exhibit  
11 and I can because I have something here in physical size in  
12 my hand and knowing tests have a gradient from the center to  
13 the outer edges, yes.

14 Q Now, referring to the Costanzo patent, Exhibit 1,  
15 what was the total concept that Costanzo was attempting to  
16 disclose?

17 A I think his total concept was a wholly self-  
18 contained battery operated sock in which a low voltage  
19 battery, one and a half volts located adjacent to the top of  
20 the sock, is energizing a heater located in a specific portion  
21 of the foot of the sock.

22 Q And would that have to be a heater construction  
23 that was capable of being energized by a one and a half volt  
24 battery and yet deliver a sufficient amount of heat to keep  
25 a wearer's foot comfortable for a measurable or a convenient  
period of time?



1           A       I would have to say that is what I feel he had in  
2 mind, yes.

3                   MR. JUNKINS: Your Honor, could the last  
4 question and answer be repeated?

5                   THE COURT: Would you read it, please?

6                   (The last question and answer was read back  
7 by the Reporter.)

8                   MR. JUNKINS: Thank you.

9           Q       I show you Timely sock Number 4 and ask you  
10 whether or not in your opinion Exhibit 4 incorporates the  
11 total concept that you describe which Costanzo was attempting  
12 to disclose?

13           A       Yes. I would say so.

14           Q       Now, I direct your attention to Exhibits 5 and 6  
15 and ask you whether or not the change in the covering  
16 material --

17                   THE COURT: Change in what?

18           Q       -- the change of the covering material in any  
19 way affects the total concept which Costanzo was attempting  
20 to disclose in his patent, Exhibit 1?

21           A       No. I would say not.

22           Q       I show you Exhibit 7, 8 and 9 -- I show you  
23 Exhibit 7, the Arron construction, and ask you whether or not  
24 that construction embodies the total concept which you  
25 describe which was what Costanzo was attempting to disclose?

1 complete his opinion on the question of obviousness.

2 DIRECT EXAMINATION

3 BY MR. FATTIBENE:

4 Q Mr. Murphy, referring to the Costanzo patent,  
5 Exhibit 1, have you made a study of the references cited?

6 A Yes. I have.

7 Q Of the patents cited, is there any patent which  
8 in itself discloses the Costanzo concept of a wholly self-  
9 contained sock?

10 MR. KUNIN: Your Honor, I believe this is  
11 out of the scope of rebuttal. It would appear to be going  
12 to the validity of the Costanzo patent.

13 THE COURT: I have trouble hearing you.

14 MR. KUNIN: I beg your pardon. It would  
15 appear to go to the validity of the Costanzo patent. I  
16 mean we have been through here. My understanding was  
17 Mr. Murphy was coming on in rebuttal which would have to do  
18 with the Arron patent rather than the Costanzo patent.

19 THE COURT: Well, didn't your proof indicate  
20 that the plaintiff's patent was invalid?

21 MR. KUNIN: Well, it was a defense. I  
22 don't know --

23 THE COURT: Well, he is entitled to meet  
24 that, I would think. Anyway, you have an exception.

25 Now, the question was: Were there any



1 patent references --

2 BY MR. FATTIBENE:

3 Q Of the patents cited in the Costanzo patent, did  
4 any single reference disclose the Costanzo wholly self-  
5 contained concept of an electrically heated sock having a  
6 battery of less than six volts carried adjacent to the top  
7 of the sock and which had a heater located in the toe  
8 portion of the sock constructed so as to generate a com-  
9 fortable amount of heat for a reasonable period of time?

10 A No. They did not.

11 Q Now, in view of the patents cited in the Costanzo  
12 reference, did you find any combination of those references  
13 which disclose the Costanzo concept just described?

14 A No. I found no such combinations.

15 Q Of the patents cited in the Costanzo file history  
16 and in view of the commercial socks which were then  
17 available and which you have described as the Northern  
18 Electric sock, the Burnham sock, the Kimco sock, et cetera,  
19 which do you consider to be the most relevant prior art  
20 with respect to the Costanzo concept?

21 A The commercial socks.

22 Q Now, in view of your study of the patented art  
23 and the then available commercial art, can you formulate an  
24 opinion as to whether or not the differences between both  
25 the patented art and the commercial available art would have

1 obvious?

2 A Yes. I can form an opinion.

3 Q With respect to one skilled in the art at the  
4 time Costanzo made his invention?

5 A Yes. I can form that opinion.

6 Q Now, would the differences between either the  
7 prior patented art or the commercially available sock  
8 construction and the Costanzo wholly self-contained concept,  
9 would they have been obvious?

10 A No. They would not have been.

11 Q And what are the reasons for your conclusion?

12 A Well, obviously, the patents cited, many of the  
13 same patents I recognize as coming across my desk when I  
14 was at Northern Electric and, of course, all pertinent  
15 patents were circulated through the department and, of  
16 course, if they were obvious to anyone skilled in the art,  
17 one of the engineers or myself would have picked them up  
18 and used them.

19 THE COURT: I don't know whether that  
20 follows, but that is the argument, I take it. Does it  
21 always follow that when skilled people see patents in other  
22 commercial successors that are not patented, that if they  
23 don't pick up any new ideas, therefore, they are not obvious?  
24 That is the part that puzzles me about this whole case.

25 THE WITNESS: Well, in this particular instance



1 Your Honor, where the company was manufacturing electrically  
2 heated socks, I think it is. There may be instances where  
3 this would not be so, but in this case, this was vitally im-  
4 portant to the success of the company, and one of the individuals  
5 cited by the Patent Office was an engineer employed by this  
6 company, Mr. Theodore. He worked for the subsidiary known as  
7 Electric Parts Corporation, so he was working on these products  
8 and if it was not obvious to him, I don't think it would be  
9 obvious to anyone else.

10 BY MR. FATTIBENE:

11 Q Now, do you have any other reasons for concluding  
12 that the differences between the prior art structures and what  
13 Costanzo disclosed would not have been obvious?

14 A Well, I think, basically, this is the primary con-  
15 sideration, but there were other companies also in the field  
16 and it did not become apparent to them or obvious to them and  
17 they were competitors and, obviously, looking for an advantage.

18 MR. FATTIBENE: Now, I would like to introduce  
19 another patent as an exhibit. Plaintiffs' Exhibit 311.

20 MR. KUHIN: Can I ask what the relevance -- I  
21 mean, what is this being offered to prove?

22 MR. FATTIBENE: Well, this is being offered to  
23 prove that -- this is another reference in which I want to get  
24 Mr. Murphy's opinion as to whether or not the Costanzo construc-  
25 tion would have been obvious in view of this reference. This

1 is a new reference which was not previously cited.

2 MR. KUNIN: No objection, Your Honor.

3 MR. FATTIBENE: I would like to introduce into  
4 evidence Patent 2287915, Patent to Taylor.

5 (E.H. Taylor Patent 6-30-42 No. 2287915 received  
6 in evidence and marked Plaintiffs' Exhibit 311.)

7 BY MR. FATTIBENE:

8 Q I show you Exhibit No. 311 and ask you if you can  
9 identify it?

10 A Yes. I can.

11 Q Can you please identify it?

12 A It is the E.H. Taylor patent granted June 30, 1942  
13 specifically covering electrically heated clothing and equipment.

14 Q Now, have you made a study of this reference?

15 A Yes. I have.

16 Q Now, in view of your study, can you formulate an  
17 opinion as to whether or not disclosures made by this patent  
18 and the differences -- I will strike the question, Your Honor.

19 Can you determine from your study whether the dif-  
20 ferences between what is disclosed in this patent Exhibit 311  
21 and that that Costanzo disclosed in his patent, Exhibit 1, would  
22 have been obvious to one skilled in the art at the time Costanzo  
23 made the invention?

24 A No. It would not have been obvious to one skilled in  
25 the art at the time he made the invention.



1 Q Now, why do you formulate this opinion?

2 A Well, basically, this is a continuation of a series  
3 of patents, and electrically heated flying suits, such as  
4 Jacobsen, Marick, Van Daam, and I don't think this has any  
5 bearing at all on the Costanzo patent.

6 Q Would the disclosure of the Taylor patent, Exhibit  
7 311, be of the type of prior art construction that Costanzo  
8 made reference to in paragraphs 2 and 3 of his patent, column  
9 1?

10 MR. KUNIN: Your Honor, he has already testified  
11 it has no bearing on the patent.

12 THE COURT: Well, I will allow it. You want to  
13 know whether or not --

14 BY MR. FATTIBENE:

15 Q Whether the disclosure of the Taylor patent was of  
16 the nature of the prior art that was known to Costanzo and  
17 referred to in the preamble of his patent, paragraphs 2 and 3  
18 of column 1.

19 THE COURT: All right. Do you have an answer to  
20 that?

21 THE WITNESS: Yes. This is the type he was  
22 referring to.

23 Q Now, can you point out where Costanzo makes reference  
24 to the disclosure of the type made by Taylor in his patent?  
25 Reference being made to column 1, paragraph 2.

1 THE COURT: Of Costanzo?

2 MR. FATTIBENE: Of Costanzo.

3 THE WITNESS: "Consequently, such socks..."

4 this is line 25: "Consequently, such socks had limited applica-  
5 tion as for example when sleeping, resting or when flying an  
6 airplane or operating some other vehicle where the movement  
7 of the area necessarily was available to energize the heater  
8 or such socks."

9 Q Now, with respect to the Timely sock constructions  
10 evidenced by Exhibits 5 and 6, who was solely responsible for  
11 the engineering and manufacturing of those socks?

12 A I was.

13 MR. KUNIN: Your Honor, this is outside the  
14 scope of rebuttal, I would think.

15 THE COURT: I would think this doesn't relate  
16 to the question of obviousness, does it?

17 MR. FATTIBENE: But, Your Honor, I think on  
18 their part of the case they tried to imply that Mr. Hines was  
19 personally responsible for making the socks and, therefore --

20 THE COURT: Well, he said that the decisions  
21 were his, as I remember.

22 MR. FATTIBENE: Well, the decisions were as  
23 President of Timely Products, but actually, the actual mechanics  
24 of making --

25 THE COURT: I will assume that he didn't get down  
at a table and make them, if that is what you are trying to



1 THE COURT: Oh, no. Let's get this witness  
2 back to making some money.

3 REDIRECT EXAMINATION

4 BY MR. FATTIBENE:

5 Q Why were you negotiating with Ray Costanzo?

6 A I was told that he was the owner of the patent  
7 and so I really wasn't interested in anybody else. I wanted  
8 the owner's signature on the agreement.

9 Q Well, what led you to believe that Ray Costanzo  
10 was the owner of the patent?

11 THE COURT: He told him he was -- weren't  
12 you introduced as that?

13 THE WITNESS: Irving Gorbach introduced me  
14 to Mr. Costanzo in front of Stanley Arron as the owner of the  
15 patent. I was given a copy of the patent to show my attorney.  
16 This is the one you are not interested in. I was told that  
17 nobody else had any right in the patent, that Stanley Arron  
18 was, you know, possibly an officer or an associate in the  
19 Stanzo Electronic Industries, Incorporated, but that he had  
20 nothing to do with the patent.

21 Q Now, can you refresh your recollection as to  
22 whether or not at the time you received a copy of the patent  
23 application which you indicated was the Costanzo patent  
24 application, can you recollect as to whether or not he told  
25 you the application was in process of being prepared or that

1 Bridgeport, I worked in the office, but if he left work  
2 from New York and he was in New York -- I would go in most  
3 of the time. I was there when he was there.

4 Q Now, do you know a Ray Costanzo?

5 A Yes.

6 Q Is he also --

7 MR. KUNIN: Your Honor. When you refer to  
8 Mr. Fattibene, you mean this Mr. Fattibene?

9 THE WITNESS: Yes. I am sorry.

10 Q Is he also known to you as Raphael Costanzo?

11 A I just know him as Ray Costanzo.

12 Q Now, how did you first come to know Ray Costanzo?

13 A I met him in the office on Golden Hill.

14 Q Had you had any telephone conversations with  
15 Ray Costanzo prior to meeting him?

16 A Yes.

17 Q And did the time come when you actually personally  
18 met Ray Costanzo?

19 A I am sorry.

20 Q Did the time come when you met Ray Costanzo?

21 A Yes.

22 Q When did you actually meet Ray Costanzo personally?

23 A I met Ray in the office about two months after I  
24 started working there, which would be March of '64.

25 Q And have you seen Ray Costanzo on more than one



1 occasion?

2 A Yes. In the office.

3 Q Did you have any conversations with Ray Costanzo?

4 A Yes. Ray and I would talk now and then. That is  
5 all. I have talked to him on the phone quite a bit.

6 Q Now, did you ever have any conversations with  
7 Ray when he came into the office?

8 A Yes.

9 Q Did you have any conversations with Ray regarding  
10 any invention that he might have made?

11 A Yes.

12 Q Which invention in particular?

13 A The sock.

14 Q Did you have any conversations with Ray Costanzo  
15 about the sock?

16 A Yes.

17 Q Can you tell the Court what the conversation was,  
18 what you said and what he said?

19 A Ray had come in one day and I had seen the sock  
20 and I asked him if that was his sock, and he said "Yes",  
21 and I kidded with Ray and said "Why don't you get me a pair  
22 because my feet are always cold?"

23 Q Now, where did you see this sock?

24 A In our filing cabinet in the office.

25 Q And can you describe the type of filing cabinet

1 that it was?

2 A It was a double door steel filing cabinet. It  
3 held all our supplies. I am sorry. It was the stationery  
4 cabinet, not the filing cabinet. It held the stationery.

5 Q It was a combination stationery-wardrobe cabinet;  
6 is that correct?

7 A Right.

8 Q And you kept your supplies in the cabinet?

9 A That is correct.

10 Q So how many times would you say you have seen  
11 this sock that you refer to?

12 A Well, each time I went in for my supplies, the  
13 sock was in the cabinet.

14 Q Now, do you recognize or can you describe that  
15 sock?

16 A I remember the sock is a heavy wool, white with a  
17 red trim. That is all.

18 MR. FATTIBENE: I would like to mark for  
19 identification Plaintiffs' Exhibit 78.

20 (Sock marked Plaintiffs' Exhibit 78 for  
21 identification.)

22 Q I show you Plaintiffs' Exhibit Number 78 for  
23 identification and ask you if you can identify it?

24 A This is the same sock.

25 Q Is Exhibit 78 the sock that you had conversations



1           A     Stanley Arron's parents.

2           Q     And how well do you know them?

3           A     Well, Max is deceased, and I knew both, he and  
4 his wife, for about the same length of time as I have known  
5 Stanley.

6           Q     And how many years is that?

7           A     Twenty-seven years probably.

8           Q     And do you also know Ray Costanzo?

9           A     Yes.

10          Q     Do you also know him as Raphael Costanzo?

11          A     I know him as Ray.

12          Q     Have you had any conversations with Ray Costanzo  
13 at all recently?

14          A     No, sir.

15          Q     When was the last conversation you had with  
16 Ray Costanzo?

17          A     I don't remember.

18          Q     Would you say that you are more friendly with  
19 Stanley Arron than you are with Ray Costanzo?

20          A     Stanley Arron, yes, sir.

21          Q     Now, did Stanley Arron introduce you to  
22 Ray Costanzo?

23          A     Yes, sir.

24          Q     Do you recall the circumstances under which  
25 Stanley Arron introduced you to Ray Costanzo?

1 Q How did Stanley Arron introduce you to Ray Costanzo?

2 A I originally met Ray at their plant on Seymour  
3 street in Bridgeport, Connecticut.

4 Q And how did Stanley introduce you to Ray?

5 A He introduced me to Ray as his partner.

6 Q Did Stanley also tell you at that time that Ray had  
7 invented an electric sock?

8 A Yes.

9 Q And did you see that sock at that time?

10 A No, sir.

11 Q And where was this plant that was located as you  
12 referred to?

13 THE COURT: I thought he just told us.

14 THE WITNESS: Seymour Street, Bridgeport.

15 Q Did you at any time see an electric sock?

16 THE COURT: Any place, in the stores or --

17 Q At the plant at the time that you were at the  
18 plant?

19 A At that specific first meeting?

20 Q Well, let me ask you this question: How often did  
21 you visit the plant?

22 A I would say roughly every ten days or so as I got  
23 involved with the company.

24 Q Now, how did you get involved with the company?

15 A Well, they were badly in need of funds and they



1 felt that they had some products that were very salable and  
2 they needed financing, and I had a connection with a former  
3 officer of the Bridgeport Brass who had a connection with  
4 Hayden Stone in New York, and he thought that he could arrange  
5 the financing for the Costanzo Company.

6 Q Were there any products involved at this time?

7 A Were there any what?

8 Q Products involved at this time?

9 A Yes. There was a defroster, pressure switch, a  
10 shovel type -- it was a defroster for the car window and  
11 also a pressure switch and heated belt and also a stove that  
12 ran off the car battery that would be very useful for campers.

13 Q Was there also an electric sock in this group of  
14 products?

15 A No, sir.

16 Q Did you ever --

17 THE COURT: It might help me a great deal if  
18 the witness could recall the approximate time of the intro-  
19 duction and the subsequent times.

20 THE WITNESS: Yes, sir. I signed a  
21 confidential disclosure on December 17, 1964, and it had all  
22 these items which I had mentioned to you.

23 THE COURT: Well, are you suggesting to me  
24 that because of that memorandum, your recollection is now that  
25 this meeting was about December of '64?

1 THE WITNESS: Yes, sir.

2 THE COURT: Thank you.

3 Q Did you meet Ray prior to executing that agreement?

4 A I am pretty sure we met before that, yes, sir.

5 THE COURT: Approximately how long, a week,  
6 a month?

7 THE WITNESS: I would say within a couple  
8 weeks period.

9 Q And did you at any time testify that the first  
10 product in which you had occasion to meet Ray Costanzo was  
11 an electric sock?

12 A No, sir. On the deposition that I -- can I  
13 answer your question and then tell you what happened?

14 THE COURT: Well, I think it is up to Counsel.  
15 He might not want you to do it that way.

16 THE WITNESS: All right.

17 THE COURT: Do you want him to or not?

18 Q Well, on your deposition, do you recall being  
19 asked the question, "How long have you known Ray Costanzo?";  
20 and did you answer "It is a good question."

21 MR. KUNIN: Would you give me the page,  
22 please?

23 MR. FATTIBENE: Page 3.

24 Q "It is a good question. I think when Stanley got  
25 connected with Ray, he introduced me to him. Let's see. I



1 that it has relevancy because of a date on it, and then you  
2 told me that it was some character analysis of your client  
3 which I am not interested in yet. Are you interested in  
4 having me know somebody else's analysis of your client's  
5 character?

6 MR. FATTIBENE: Well, I wouldn't mind.

7 THE COURT: In fact, you are anxious to, I  
8 guess.

9 MR. FATTIBENE: Well --

10 THE COURT: Well, I won't take it. All right.  
11 Do you have some other questions to ask? We will keep it as  
12 508 for identification.

13 Let's get on now with the business of this  
14 gentleman here. He has been on the stand for over an hour  
15 and a half.

16 Q Now, were you aware that Stanley Arron was also  
17 showing the electric sock to people other than the ones that  
18 you were disclosing the electric sock to?

19 THE COURT: That is a loaded question if I  
20 ever heard one, but no objections were made to it.

21 Were you aware of that fact?

22 THE WITNESS: Yes.

23 THE COURT: All right.

24 Q Were there ever any secrets between what you were  
25 doing and what Stanley Arron was doing?

1 A No, sir.

2 Q And were you aware of the people to whom Stanley  
3 Arron was showing the electric sock?

4 THE COURT: Was he aware of the people's  
5 identity?

6 MR. FATTIBENE: Yes.

7 THE WITNESS: Yes. From time to time, I  
8 would. Stanley or Ray would discuss with me what he was doing  
9 and I remember that time with Seneca Mills, they were trying  
10 to find a sock company that could manufacture the sock and  
11 that name sounds very familiar to me.

12 Q Do you recall any other people to whom Stanley  
13 Arron was disclosing the electric sock?

14 A No, sir.

15 Q Did Stanley Arron ever disclose the electric sock  
16 to the same parties to whom you were disclosing the electric  
17 sock?

18 THE COURT: You mean in his presence?

19 MR. FATTIBENE: In his presence.

20 THE WITNESS: No, sir.

21 Q And were you disclosing electric socks to other  
22 parties both in the presence of Stanley Arron and Ray Costanzo  
23 and in the presence of Ray Costanzo only?

24 A Yes.

25 Q Now, what parties did you disclose the electric



1 Go ahead.

2 MR. FATTIBENE: "For the record, would you  
3 please state your full name?"

4 "A Robert J. McCarthy."

5 "Q And where do you reside, Mr. McCarthy?"

6 "A In the town of North Salem. I don't know whether  
7 it is official. It is 9 Valeria Circle, Goldens Gridge,  
8 New York. That will find me, let's put it that way."

9 THE COURT: Is that less than a hundred miles?

10 MR. FATTIBENE: Well, Your Honor, he has moved  
11 since this deposition. He is down in Virginia now.

12 THE COURT: Very well. Thank you.

13 "Q Okay. Generally, what is your business affiliation?"

14 "A Right now it is Marathon Battery Company, which is  
15 the carry-on from Sonotone Battery Company. Sonotone has  
16 moved on in this merger business that's actually what it is."

17 MR. FATTIBENE: Turning to page 4:

18 "Q And when was that?"

19 "A I started to work for Sonotone in July of 1957  
20 right through until Sonotone was made part of Marathon Battery  
21 Company, which was July of 1969."

22 "Q Now, do you know Stanley Arron?"

23 "A Yes, I do."

24 "Q And can you tell me how you happened to meet  
25 Stanley Arron?"

1 "A To the best of my recollection, Stanley Arron first  
2 visited me in my office in Sonotone at Elmsford, New York.  
3 Can I refer to a paper to get my timing on it?"

4 "Q Yes."

5 "A See, not only lawyers come with papers. I come  
6 with it, too."

7 MR. FATTIBENE: Mr. Kunin interjected,  
8 "Very comforting." and then he continued with the answer:  
9 "To the best of my recollection, it was probably December,  
10 '64, the first visit by Stanley."

11 MR. FATTIBENE: Turning to page 5:

12 "Q Well, what conversations did Stanley have with  
13 you at that time?"

14 "A We were talking at that time about heater elements.  
15 It seems to me that they were in a business of making heater  
16 elements, and I was interested in heater elements, because I  
17 was sort of pushing a program with the company of making  
18 heated socks. We made rechargeable batteries, and we thought  
19 we could put the two together for people at football games,  
20 for policemen and older men. Policemen in the cold could  
21 use these. And I was looking for elements. Stanley was  
22 using elements. If I remember, the first thing I knew about  
23 it was a heated belt that he had. And at that time, I don't  
24 remember whether I actually saw the element at that time. I  
25 told Stanley what we were doing or what we wanted to do and



1 desired to do, and he left with the comment, "I want to bring  
2 my boss down."

3 MR. FATTIBENE: Turning to page 6:

4 "Q Did you see Stanley again thereafter?"

5 "A Yes, I did, on January 5, 1965."

6 "Q Now, can you tell me what was the occasion for  
7 this visit?"

8 "A He brought what I assumed was his boss down. He  
9 brought Mr. Costanzo."

10 "Q He brought Mr. Costanzo down on January 5th?"

11 "A Yes."

12 "Q Can you tell me the gist of the conversations that  
13 you had with Arron and Costanzo on January 5th?"

14 "A Yes. It was pretty much a rehash of the first one,  
15 of what we wanted to do and what they were doing. In addition  
16 to the belts, they now showed me the element, the little  
17 jiggle stamped out element, that was used in it. And he  
18 also showed me an element they used in a stove. I think it  
19 was a stove in trailers and boats and so on, stamped out  
20 metal versus the expensive thing they use today."

21 "Q Now, was there a custom in Sonotone that whenever  
22 a visitor visited somebody in the company, that they would  
23 sign a visitor's book?"

24 "A Yes. "

25 "Q Do you know whether or not Stanley signed such a

1 between the early December date and the 30th going to be  
2 crucial?

3 MR. FATTIBENE: The December 30th date is  
4 crucial. There are only two dates. The first date is just  
5 --

6 THE COURT: You have answered the question.

7 MR. FATTIBENE: Yes, it is.

8 MR. KUNIN: No objection, Your Honor.

9 THE COURT: 281-B received.

10 (Letter dated 1-9-65 to McCarthy from  
11 Stanley Arron received and marked Plaintiffs' Exhibit 281-B.)

12 MR. FATTIBENE:

13 "Q Now, in this letter, he states that you told him  
14 that you were trying to re-design the sock. Do you know what  
15 he was talking about, which sock?"

16 "A Yes."

17 "Q Well, what sock were you attempting to re-design?"

18 "A We were trying to develop a -- "

19 "Q When you say "we", you mean whom?"

20 "A My company, Sonotone. And I guess I was the  
21 leader of it, because I was the one with the enthusiasm,  
22 and so forth. We were trying to develop a sock that would  
23 work on a fuel rechargeable battery. Now, we had socks from  
24 other manufacturers. We had a Northern Electric sock at the  
25 time that worked on a six volt, dry cell battery. And we



1 realized that this was too expensive to do this with  
2 rechargeable batteries, and we had to have fewer cells. So,  
3 this meant we had to change the elements inside the socks.  
4 There were other problems, such as we didn't like the quality  
5 of the socks either. But they weren't hang-ups, they were  
6 just, the question was just, how to get this element and just  
7 get it as cheap as possible, and make it as right as can be  
8 from a good engineering point of view. So, these were the  
9 problems that we were discussing."

10 "Q Now, Stanley in his letter to you, Exhibit A,  
11 also indicates that you were stuck because you couldn't get  
12 a low enough resistance out of the wire."

13 "A My notation on there says: "Not so" on that.  
14 But on further reflection, this is a very good possibility,  
15 because my problem at the time was to get a low resistance.  
16 And I didn't want too big a diameter on the wire that you  
17 would feel through the sole of the sock. So, I did have a  
18 problem getting down to the resistance I wanted. I had to  
19 get to a lower resistance."

20 "Q Now, at that time, did you ever succeed in getting  
21 a lower resistance?"

22 "A Yes, we did."

23 "Q And when did this occur?"

24 "A Oh, this has to be a wild guess on my part. When  
25 did it happen? This happened in March of '65."

1 "Q And you describe to me how you got the lower  
2 resistance?"

3 "A The engineering department got involved and  
4 obtained a wire with a thinner insulation on it. See, most  
5 wires are made for 250 volts on up. We were dealing with  
6 2 and 1/2 volts. We didn't need such heavy insulation. They  
7 obtained a wire with very fine insulation and brought the  
8 diameter of the whole wire down."

9 "Q This was still a round wire."

10 "A Yes."

11 MR. FATTIBENE: Next page, 13:

12 "Q Wrapped into a insulated, so-called insulated,  
13 cover."

14 "A That's right. It still was not the ultimate as  
15 we saw the ultimate, but it did suffice for the field test  
16 that we wanted to run."

17 "Q Now, did you ever make an actual electric sock  
18 according to the ideas that you were trying to foster in your  
19 company?"

20 "A Everything except the fine element. We actually  
21 put out somewhere between 20 to 24 model units to be tested  
22 in the field more or less as a technical test. How did they  
23 work, and so on. We distributed them around for no charge  
24 to certain people."

25 "Q And when did this occur?"



1        "A        We got some out in March of that year. But  
2 actually the real movement happened at the later part of  
3 '65, because by March we had lost our winter around here,  
4 and the only place we could pick a little bit up was one set  
5 I sent to Canada. The rest of them had to wait until the  
6 Fall of '65."

7                    MR. FATTIBENE: Page 14:

8        "Q        Did Sonotone ever go into the business of making  
9 them?"

10       "A        No, they did not."

11       "Q        You mentioned a battery pack. Can you describe  
12 the battery pack?"

13       "A        That we were trying to use?"

14       "Q        Yes."

15       "A        We wanted to get down to where we would use two  
16 F cells of nickel-cadmium. The idea was that we wanted to  
17 give two levels of heat. We recognized that the level of  
18 heat that would keep the feet warm would not actually warm  
19 the feet if you allow them to become cold first. In other  
20 words, what I am trying to depict is a person, a cop on the  
21 beat, doesn't plug his battery in until his feet are cold.  
22 Well, we realized to give him a proper amount of heat, it  
23 wouldn't work unless we could give him temporarily a lot of  
24 higher heat. So, we worked out a little switch on our  
25 battery that, if you held it by your hand, you could put the

1 battery in series, doubling the voltage. If you released it,  
2 it would automatically snap back to where they are in parallel,  
3 meaning half of the voltage. This made a difference of 4 to 1  
4 in heat level. So, if a person got their feet cold and didn't  
5 plug it in, hold the thing for maybe thirty seconds, get  
6 four times the heat, let it go back to normal, and then they  
7 would be comfortable. This is what we did. We did it in a  
8 little vacuum draw plastic case that would mount on the belt.  
9 And we had wires that went down to each pant leg to the  
10 individual's sock."

11 "Q In other words, the battery pack was on the belt."

12 "A Yes."

13 MR. FATTIBENE: Page 16:

14 "Q Now, did you show Stanley any stock samples when  
15 he visited you on December 30, 1964?"

16 "A I believe we did. I believe we did."

17 "Q Did Stanley show you any samples or models of any-  
18 thing he had with him?"

19 "A Yes. As I say, we had already seen the belts.  
20 He showed me the element used in the belts. He showed me the  
21 element used in the stove and some other element they had,  
22 which was very intriguing in that it pushed the conversation  
23 along. We saw lots of possibilities. We could see what he  
24 was doing with elements."

25 MR. FATTIBENE: Turning to page 17:



1 "A The last time I showed you something, you kept  
2 it."

3 "Q No, it's right here. We were just marking it."

4 MR. FATTIBENE: I would like to enter  
5 Exhibit 281-C into evidence, Your Honor.

6 MR. KUNIN: No objection, Your Honor.

7 (Disclosure form 1-5-65 received in evidence  
8 and marked Plaintiffs' Exhibit 281-C.)

9 MR. FATTIBENE: Turning to page 24:

10 THE COURT: Excuse me a minute. Can you  
11 interpret the date of this? Is it March?

12 MR. FATTIBENE: That is January 5,  
13 Your Honor.

14 THE COURT: January. All right.

15 MR. FATTIBENE:

16 "Q I show you this Exhibit C, which was marked for  
17 identification, and ask you whether or not your signature  
18 appears on the document."

19 "A Yes, it does."

20 "Q Whose other signature do you recognize on the  
21 document?"

22 "A Well, it says "Stanley Arron."

23 "Q Did he sign this in your presence?"

24 "A I don't recall. I don't remember."

25 "Q Did you sign it in his presence?"

1 "A No. The purpose was to sell us or possibly sell  
2 us the elements of this alkaline type."

3 MR. FATTIBENE: Page 31:

4 "Q Were you informed as to the battery pack itself,  
5 as to how it was supposed to fit in with the sock construction?"

6 "A Only because I saw the advertisement one time.  
7 And I saw it hanging right on the leg someplace. I never  
8 knew about that until I saw it in recent years in an  
9 advertisement."

10 "Q That was in a recent advertisement?"

11 "A Yes."

12 "Q This conversation was never discussed with you  
13 and with the parties. Is that correct?"

14 "A Not that I remember."

15 "Q Referring to Exhibit B again, Stanley Arron  
16 requested that you write to him concerning the subject  
17 matter involved. Did you ever reply to this letter of  
18 January 9th? I will show it to you. The last paragraph."

19 "A I know what you are talking about. I don't  
20 remember writing to him. I don't think I have my daily file  
21 with me of 1965. I doubt, in fact, I doubt very much, if I  
22 have it back that far. I would have thrown it away long ago.  
23 I don't remember writing to him. If anyone can produce a  
24 letter with my signature, I will be able to spot it, though."

25 MR. FATTIBENE: Turning to page 37:



1 "Q I am just trying to establish if there was any-  
2 body present at the conversation at all. Did you at the  
3 time make any notes yourself concerning either this meeting  
4 you had with Stanley or your thoughts on the matter?"

5 "A Oh, I am sure I did at the time make notes. But  
6 I am also sure that in time I destroyed them. You see, the  
7 reason I know this, I had a file called the "Electric Sock  
8 File." And I remember very specifically taking the stuff  
9 out and throwing it out as the project died."

10 "Q Can you tell me when you first became aware of  
11 electric socks which came onto the market other than the  
12 ones that you were aware of at the time you were discussing  
13 socks with Arron and Costanzo?"

14 "A I will have to go back a little further. I will  
15 have to violate your question a little bit. The first sock  
16 I knew about was in Northern Electric. That preceded our  
17 meeting by quite a bit. In talking to people like Northern  
18 Electric, they have evidently offered these to Sears Roebuck  
19 for a number of years. They were offering them for sale.  
20 Other than our own socks that we fool with, the next sock  
21 that I recall running into was this advertisement, which may  
22 have been only a year ago, which was I think Stanley's."

23 "Q What was the advertisement you saw?"

24 "A The only thing that strikes me odd was somewhere  
25 down in here, a "D" cell buckled in was the only thing I

1 remember about it. Other than that, I can't tell you."

2 "Q Do you remember where you saw the ad?"

3 "A No, I don't."

4 "Q Did Sunbeam make an electric heated sock?"

5 THE COURT: Sunbeam?

6 MR. FATTIBENE: Sunbeam, yes.

7 "A No, Sunbeam bought Northern Electric."

8 "Q Oh, they bought Northern Electric."

9 "A Yes."

10 "Q So, they continued with that same one?"

11 "A I'm not sure. Sears and Roebuck was selling them.  
12 I remember I used to talk to Sears Roebuck about the quantity  
13 and all the rest of this."

14 "Q Was your company at that time selling batteries  
15 to Northern Electric?"

16 "A We were trying to. We wanted to interest them in  
17 nickel-cadmium. And we convinced them to take a chance.  
18 See, they were using a six volt battery. And we convinced  
19 them to take a chance. See, they were using a six volt  
20 battery. And we convinced them to take a chance on a four  
21 "D"cell battery with a special anti-reversal device, 21  
22 claims. We sold 500. And you could not reverse the battery.  
23 That was the whole gimmick here. You don't want to reverse.  
24 In other words, you don't want to over discharge nickel-  
25 cadmium. It costs a lot of money. It is very expensive and



1 you destroy it. I worked out a way of preventing this."

2 "Q You didn't reverse the terminals, you mean?"

3 "A You over discharge a battery and one of them loses  
4 its energy before the other three. You've got 4 cells.

5 Three are going to drive that one. If the three that are  
6 still good still have energy stored in them or are delivering  
7 energy, it will force the one that has exhausted its energy  
8 into a reverse polarity and damage the battery permanently."

9 MR. FATTIBENE: Page 40:

10 "Q And you sold all that?"

11 "A With one transistor."

12 "Q When did you first learn of the specific type of  
13 heater construction that was rendered the subject matter of  
14 this confidential disclosure agreement that you signed,  
15 Exhibit C?"

16 "A January 5th, when they showed me their element.  
17 Then it became obvious: Like so many good ideas, they were  
18 simple. The idea is to get them."

19 MR. FATTIBENE: Page 73:

20 "Q Now, at the time that Stanley visited you the  
21 first time on December 30th, did you show him a sock made by  
22 Northern Electric of the type of defendants' Exhibit 3?"

23 "A I don't remember doing it, but it's very possible,  
24 because I had right in my office one or two dozen pair of  
25 them."

MR. FATTIBENE: Page 70.

"Q Now, this sock which has been identified as Defendants' Exhibit Number 3, can you recognize the manufacturer of that sock at all?"

"A No, I cannot."

"Q Would this be a sock that could have been produced by Northern Electric?"

"A Yes."

"Q And would you say that the manner in which this heater is put together in Defendants' Exhibit Number 3 was the type of heater construction that you testified to that Sonotone was using?"

"A Yes. And I will expand on that. It also the type used by Northern Electric. In fact, the socks look very much like Northern Electric socks."

"Q And the source of power for this particular sock was the large lantern type battery pouch that is carried on the belt?"

"A If it is in the original form."

"Q Yes. Now, this Defendants' Exhibit Number 2, was this construction shown to you at any time other than today?"

"A I don't recall ever seeing that construction before. As I stated earlier, I do not remember seeing the stamped element married to a sock."

MR. FATTIBENE: That is all I have, Your Honor.



1 MR. FATTIBENE: Before I call my next  
2 witness, Your Honor, I would like to read one admission into  
3 the record.

4 THE COURT: Is this an admission pursuant  
5 to notice?

6 MR. FATTIBENE: This is an admission which  
7 was filed during the discovery proceedings and which was  
8 admitted.

9 THE COURT: Yes.

10 MR. FATTIBENE: This is a letter dated  
11 July 30, 1965.

12 THE COURT: Oh, you are going to offer it  
13 in evidence?

14 MR. FATTIBENE: Yes.

15 THE COURT: Well, offer it. All right.  
16 Exhibit Number?

17 MR. FATTIBENE: It is PX-28, Your Honor.  
18 (Letter dated 7-30-65 to Mr. Janower from  
19 Mr. Arron received in evidence and marked Plaintiffs' Exhibit  
20 28.)

21 MR. FATTIBENE: It is a letter sent by  
22 Stanley Arron over his signature to Ben Janower, dated  
23 July 30, 1965.

24 THE COURT: I didn't get the name of the  
25 addressee.

1 MR. FATTIBENE: Ben Janower, J-a-n-o-w-e-r.

2 THE COURT: If it is in evidence, why don't  
3 you let me read it and I will make a note about it.

4 MR. FATTIBENE: Can I read it?

5 THE COURT: You can read it all. You are  
6 paying for it.

7 MR. FATTIBENE: This is a letter over  
8 Stanley Arron's signature sent to Ben Janower, dated  
9 July 30, 1965:

10 "The periodical, Marine Products, issued for  
11 August was just received by us. It features articles on both  
12 camping and travel trailers. The theme is that they are both  
13 lucrative fields and Marine Product dealers should get into  
14 them. You should be sure that Gittleson reads it. I am  
15 sending you the important front section of the camping article.  
16 I think I mentioned our heated socks to you. It is a very  
17 important item and we need about \$50,000 in capital for it.  
18 The merchandising manager of Hammacher-Schlemmer . . ."

19 THE COURT: Yes. I know where it is.

20 MR. FATTIBENE: " . . . just called us on  
21 it. He wants to see the final sample and give me an order.  
22 Union Carbide is interested in publishing it and possibly  
23 advertising it for us with their batteries. We can make  
24 \$121,000 net per year on this item. Sears researched the  
25 market and came up with the figure of One Million yearly for



1 anyone who can do what we have been able to do. This profit  
2 figure above is on only 100,000 units. We need some fast  
3 action on this one. You should know that my partner's  
4 creativity made this possible. He was called a near genius  
5 by his former employer." Signed "Stanley Arron".

6 I would now like to call the defendant,  
7 Stanley Arron, as my next witness.

8  
9 S T A N L E Y A R R O N , called as a  
10 witness, having been first duly sworn,  
11 testified on his oath as follows:

12 THE CLERK: Will you please state your name  
13 and address for the record?

14 THE WITNESS: My name is Stanley Arron,  
15 A-r-r-o-n. 3323 Old Town Road, Bridgeport, Connecticut.

16 THE CLERK: Thank you. You may be seated.

17 MR. FATTIBENE: Your Honor, I think we can  
18 assume that this witness is a hostile witness and I would like  
19 to cross examine him if I may.

20 THE COURT: You may, yes.

21 DIRECT EXAMINATION

22 BY MR. FATTIBENE:

23 Q Stanley Arron, are you a defendant in this case?

24 A Yes, sir.

25 Q Is Max Arron your father and is he now deceased?

1 September 15th, was that the date you stated?

2 A I did not say it was a commercial product as of  
3 that date.

4 Q I thought you said that you finally produced a  
5 product that was commercially salable and you entered into  
6 negotiations with Seneca Knitting Mills?

7 A Yes, sir. I did.

8 Q Now, you also indicated that you showed Seneca  
9 Knitting Mills a sample of this commercially salable sock  
10 and we asked you or the judge asked you when did that occur.

11 THE COURT: Well, he just told us about  
12 September 15, 1965; is that right?

13 THE WITNESS: Yes, Your Honor.

14 MR. FATTIBENE: I think he qualified that.  
15 I was under the impression --

16 THE COURT: Well, he might have. Ask him  
17 again. Is that what you said, September 15, 1965?

18 Q Is that what you said, September 15, 1965?

19 A Yes, Your Honor.

20 Q And at that time, you showed Seneca Knitting Mills  
21 a sample which you considered was commercially salable?

22 A In principle and through tests, but it needed  
23 some refinements in some of its features, but it was a sock  
24 that passed certain tests and has been used to this day by  
25 myself and Timely.



1 Q Well, what features needed refinement?

2 A Oh, the battery holding system hadn't been  
3 finalized, and I think I started out with encasing the heat-  
4 ing element by wrapping non-woven fibers of nylon around it  
5 and I later switched to something that was thinner and --

6 Q Well, is it my understanding, then, that on  
7 September 10th, you had not finalized the battery pouch  
8 portion of the sock?

9 A It is not exactly accurate. You know, as far as  
10 I am concerned, development is never completed. I have made  
11 numerable changes since then, but --

12 Q Well, what was the problem you were having with  
13 the battery pouch on September 15th that needed refinement?

14 A Well, my original idea had been what I call self-  
15 containment, which meant putting the battery inside the  
16 top of the sock so that nothing was on the outside of the  
17 sock with the same thinking in mind, that when you buy a  
18 transistor radio or a tape recorder and it is battery operated,  
19 you don't see batteries protruding out the top or the bottom.  
20 They are inside the product, and I thought that was feasible  
21 with a C cell in the spring, but in September I realized a  
22 C cell didn't have enough capacity and switched to a D cell  
23 and the D cell was too big for self-containment to put  
24 inside the top of the sock, so I was working at that time  
25 with a pouch on the outside of the sock.

1 Q And this had not yet been finalized as of  
2 September 15th, is that correct, of '65?

3 A In the sense that I knew I was not going to put  
4 the battery inside the top of the sock that was finalized,  
5 exactly what type of hole and whether I was going to use it  
6 on the outside and use a knitted pouch or plastic pouch or  
7 some other material, this was not finalized.

8 Q Well, then, you did not even finalize the type of  
9 battery holder yet, did you, because in order to finalize on  
10 the pocket, you must finalize on the battery holder?

11 A Yes, sir. That is right.

12 Q So can we establish, then, that you had not even  
13 finalized on the battery holder?

14 A Well, you use the word "even" as though it were  
15 important, and in my opinion, it wasn't particularly a great  
16 problem.

17 Q Well, how long did it take you to solve the  
18 problem?

19 A Oh, long enough to write away to a company that  
20 made battery holders.

21 THE COURT: I gather this is on the question  
22 both of infringement and the alleged larceny of a business?

23 MR. FATTIBENE: Yes.

24 THE COURT: Does it make any difference at  
25 all whether it wasn't finalized on that date?



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1 THE COURT: Does the letter so indicate?

2 MR. FATTIBENE: No. It doesn't. It just  
3 says he spoke to Mr. Piller.

4 Q Now, did Mr. Piller run the ad in a magazine in  
5 October?

6 THE COURT: Well, aren't you betting a  
7 dead horse?

8 MR. FATTIBENE: Well, maybe I am, Your Honor.

9 Q All right. Let me ask you this question: How  
10 long did your contract with Seneca stay in effect?

11 A The contract that I -- you mean the contract  
12 that I negotiated with Seneca in October of '65?

13 Q September of '64 or was it September -- no. No.  
14 1965. I am sorry.

15 A It stayed in effect until early 1966, around  
16 March, if I recall.

17 Q Did you cancel that contract?

18 A Yes.

19 THE COURT: Until March of '66?

20 THE WITNESS: Yes, Your Honor.

21 Q You initiated the termination?

22 A I did not initiate the termination.

23 THE COURT: Can I make a guess: Was it  
24 some charge that they were contributing to the infringement?

25 THE WITNESS: Yes, Your Honor. It was

1 worse than that.

2 THE COURT: I don't see how this is going  
3 to help me.

4 MR. FATTIBENE: Well, Your Honor, what we  
5 are leading up to now is that Mr. Costanzo -- I mean  
6 Mr. Arron terminated his agreement with Seneca and then he  
7 took up where they left off. So now we get into the area of  
8 infringement.

9 THE COURT: Wouldn't it be infringement that  
10 would wipe off on him if Seneca was doing it pursuant to his  
11 license?

12 MR. FATTIBENE: Well, we haven't reached  
13 the issue date of the patent yet. See, these activities were  
14 occurring --

15 THE COURT: That is what? Give me the date  
16 again so I remember.

17 MR. FATTIBENE: It is December 20, 1966.

18 THE COURT: I get it. All right.

19 MR. FATTIBENE: Exhibit 282.

20 (Letter dated 3-24-66 to Seneca from Arron  
21 received in evidence and marked Plaintiffs' Exhibit 282.)

22 Q Now, I show you Exhibit 282 and isn't this a  
23 letter that you wrote to Seneca Knitting Mills terminating  
24 the contract because you have indicated that Seneca breached  
25 their agreement?



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1 and then maybe it will all work out fine.

2 He is suggesting to you that Max Arron  
3 and Anna Arron were and are directors and what?

4 MR. FATTIBENE: Officers.

5 THE COURT: Officers. Do you agree with  
6 that?

7 THE WITNESS: No, Your Honor.

8 THE COURT: I take it one reason is that  
9 Max is dead?

10 THE WITNESS: Well, previous to that.

11 THE COURT: Previous to that, he and she  
12 were not?

13 THE WITNESS: No, Your Honor.

14 THE COURT: Neither directors or officers?

15 THE WITNESS: No, Your Honor.

16 MR. KUNIN: No objection.

17 MR. FATTIBENE: PX-7.

18 MR. KUNIN: I think there is a PX-7 already.

19 THE COURT: Yes. It is one of the  
20 principal exhibits.

21 MR. FATTIBENE: That is 536.

22 (Annual Report 1967 Visa-Therm received in  
23 evidence and marked Plaintiffs' Exhibit 536.)

24 Q I show you Exhibit 536 and ask you if this isn't  
25 the Annual Report filed for the year 1966?

224.

THE COURT: Wait now.

MR. FATTIBENE: I mean 1967. I am sorry.

THE COURT: The Annual Report of Visa-Therm  
for what year?

MR. FATTIBENE: 1967.

THE WITNESS: It is.

Q And did you file that report?

A No, sir.

Q Who filed it?

A Larry Schwartz.

Q Who are the named officers and directors?

A President, Stanley Arron; Vice-President,  
Max Arron; Treasurer, Stanley Arron; Secretary, Anna Arron.

THE COURT: Can I see that? I am not  
familiar with filing reports in Connecticut.

MR. FATTIBENE: (Hands document to Court)

THE COURT: I just want to get the Statute  
number. You say that this report was filed by Mr. Schwartz?

THE WITNESS: Yes, Your Honor.

THE COURT: May I suggest that you look at  
the right hand corner?

THE WITNESS: I see my signature there,  
Your Honor.

THE COURT: Oh, did you sign it?

THE WITNESS: Yes, Your Honor.



1 THE COURT: And what you meant by your  
2 answer was that after you signed it, you gave it to  
3 Mr. Schwartz and he mailed it?

4 THE WITNESS: I think I went into his office,  
5 signed it and walked out, something of that nature.

6 THE COURT: And he took care of it from  
7 there?

8 THE WITNESS: Yes, Your Honor.

9 THE COURT: Who put up the dough?

10 THE WITNESS: I think it was Twenty Dollars  
11 or Ten or Fifteen.

12 THE COURT: Yes. That little kind of money.

13 THE WITNESS: I would imagine I perhaps  
14 brought the check in at the time I signed it.

15 THE COURT: Thank you. Do you know the  
16 section of corporation law that requires this offhand?

17 MR. KUNIN: I will bet you it's 332 something,  
18 but I think --

19 THE COURT: 3 --

20 MR. KUNIN: 236, something on that order.

21 THE COURT: But the first number is 33?

22 MR. KUNIN: I believe so, ye's.

23 BY MR. FATTIBENE:

24 Q Now, isn't it a fact that Larry Schwartz has been  
25 your attorney for a number of years?

1 A Yes, sir.

2 Q And he has also been attorney for Mr. Arron,  
3 Mrs. Arron over the years?

4 A Yes, sir.

5 MR. FATTIBENE: 267-A.

6 MR. KUNIN: No objection.

7 (Letter dated 3-29-67 to Fattibene from  
8 Schwartz received in evidence and marked Plaintiffs'  
9 Exhibit 267-A.)

10 Q I show you Exhibit 267-A which is a letter dated  
11 March 29, 1967 from Larry Schwartz to A. T. Fattibene and  
12 ask you if it isn't a fact that Max and Anna Arron were  
13 officers of the corporation as of the date of this March 29,  
14 1967 letter?

15 A It is not a fact.

16 Q Were you aware that Larry Schwartz was telling me  
17 that Max and Anna Arron were officers of Visa-Therm Products  
18 Incorporated?

19 A Yes, sir.

20 Q Are you implying that they were not officers?

21 THE COURT: He said it under oath.

22 MR. FATTIBENE: I am sorry, Your Honor.

23 THE COURT: Did you not?

24 THE WITNESS: Yes, Your Honor.

25 THE COURT: Can I see the letter?



1 MR. FATTIBENE: The minutes that are dated  
2 October 19, 1966.

3 Q Now, where were these minutes prepared?

4 A At the attorney's office.

5 Q And at that meeting of October 19, 1966, did the  
6 two dummy incorporators resign and were Max and Anna Arron  
7 appointed as the directors and officers of the corporation  
8 at that meeting?

9 A Well, it says here that Stanley Arron wasn't able  
10 to convince Max and Anna Arron to take any part in the  
11 company.

12 Q No, no. You are not looking at the minutes of  
13 that meeting. That was the later meeting.

14 A Where do you want me to read from?

15 THE COURT: He doesn't want you to read.  
16 He wants to know from your independent recollection whether  
17 at the first meeting these two secretaries resigned and your  
18 father and mother were appointed in their stead and if you  
19 can't remember, he is giving you these papers to help you.

20 THE WITNESS: I do remember, Your Honor.

21 THE COURT: And the answer is?

22 THE WITNESS: The answer is they did not  
23 resign until they were named as parties in the suit.

24 Q I direct your attention to --

25 A I realize that the written word contradicts my

1 verbal statement and my testimony is not changed.

2 Q Well, you are stating, then, that --

3 THE COURT: He is saying that the minutes  
4 are wrong and his recollection is superior to it.

5 Q Now, I show you Exhibit 255 which is identified  
6 as the Organizational and first Annual Report and ask you  
7 whether or not you filed that report, 1966?

8 A I would think that my attorney filed it.

9 Q Is your signature on that document?

10 A Yes.

11 Q And was that the actual state of the corporation  
12 at the time you filed the document?

13 THE COURT: That is what? I couldn't hear  
14 it.

15 Q Were these parties that are named in the first  
16 Annual Report the actual officers and directors at the time  
17 you filed the document?

18 A Yes, sir.

19 THE COURT: He said his lawyer filed it and  
20 he signed it.

21 Q Oh, well, at the time the document was filed,  
22 Exhibit 255?

23 A Yes, sir.

24 Q Now, was there a meeting on March 6, 1967 called  
25 by the directors of Visa-Therm Products, Incorporated?



1           A     There was.

2           Q     What happened at that meeting of March 6th?

3           A     Would you want me to read it, Your Honor?

4                   THE COURT: Well, he didn't ask you to read  
5 it. Can you recall from your own independent recollection?

6           THE WITNESS: Not really, Your Honor.

7           THE COURT: Well, will the paper help you?

8           THE WITNESS: Yes, it will.

9                   THE COURT: Well, look at the paper and don't  
10 read it out loud, but just read it to yourself and then you  
11 can tell us.

12                   THE WITNESS: I was chosen clerk and  
13 chairman and I made a report to the effect that after consul-  
14 tations with Max and Anna Arron, I was unable to convince  
15 them to take any part in the company and they refused to  
16 really become officers of the company or participate as  
17 directors. I further reported that they insisted on immediate  
18 removal from the corporation minutes as they had no interest  
19 in the corporation or being a part thereof. I further  
20 reported that Mr. Edward Malvey and Mr. Herschel Dryer had  
21 consented to become officers and directors. A motion was made,  
22 seconded and carried that the officers would be as follows:  
23 Stanley Arron, President; Herschel Dryer, Vice-President;  
24 Edward Malvey, Secretary; and Stanley Arron, Treasurer.

25                   THE COURT: Herschel Dryer?

1 THE WITNESS: Yes, Your Honor.

2 THE COURT: D - r --

3 THE WITNESS: y-e-r.

4 THE COURT: And the other man?

5 THE WITNESS: Edward Malvey, M-a-l-v-e-y.

6 Then it was seconded and carried that Edward Malvey --

7 THE COURT: What was the date of that  
8 meeting? Will you just look?

9 THE WITNESS: March 6, 1967, Your Honor.

10 THE COURT: It was before the lawsuit, I  
11 guess, Mr. Fattibene?

12 MR. FATTIBENE: Yes. Pardon? I didn't hear  
13 you, Your Honor.

14 THE COURT: The witness told me that the  
15 meeting of March 6, 1967 was before the lawsuit.

16 MR. FATTIBENE: Well, that is what I  
17 understand, but I got a letter --

18 THE COURT: No. All I wanted to know was  
19 whether you agree with me from the endorsement on the complaint  
20 that the lawsuit was received by the Clerk of this court on  
21 March 16, 1967 and it is pretty hard to dispute it, I guess.

22 MR. FATTIBENE: That is true, Your Honor.

23 Q Now, who is -- excuse me.

24 THE COURT: Edward Malvey?

25 MR. FATTIBENE: Malvey, yes.



1 THE COURT: Who is he?

2 THE WITNESS: He was.

3 THE COURT: He no longer exists?

4 THE WITNESS: He is deceased, Your Honor.

5 THE COURT: Deceased. I see.

6 Q Would you care to tell the Court how he deceased?

7 THE COURT: How he deceased? I suppose his  
8 heart stopped some way.

9 THE WITNESS: Well, he was unfortunately  
10 an alcoholic and he was sitting -- as I understand it, he  
11 was sitting on the dock side of the harbor and fell in the  
12 water and drowned from the newspaper report. That is all I  
13 know. That is what happened.

14 Q Isn't it a fact that he had a long series of  
15 arrests for alcoholism and vagrancy?

16 THE COURT: The man is dead. What are we  
17 going to do now about it?

18 MR. FATTIBENE: I don't relish bringing this  
19 up, Your Honor, but I feel that we have to get the real  
20 parties involved.

21 MR. KUNIN: Your Honor, if I might attempt  
22 to clarify this: At the time all this happened, there was a  
23 Connecticut Statutory requirement --

24 THE COURT: Yes. I read the brief and they  
25 keep reducing it down to one.

1 MR. KUNIN: And they reduced it to one  
2 subsequently and Edward Malvey was just a name. He was,  
3 essentially, a vagrant and has nothing whatsoever to do with  
4 anything, but at the time he was -- it was necessary that  
5 we needed two additional names. As a matter of fact, the  
6 corporation requirement still is that there be a president  
7 and secretary, and I really don't know why that is since  
8 when an individual is doing business for himself and wants  
9 to incorporate, I see no reason why he shouldn't, but it was  
10 to fulfill the Statutory requirement.

11 THE COURT: We will let Counsel pursue it.  
12 You agree he was a man who had this habit?

13 THE WITNESS: He happened to be a nice  
14 person with a problem.

15 THE COURT: And he was known to you to be  
16 that at the time of his appointment?

17 THE WITNESS: I had known him since about  
18 1952 and we would give him fifty cents or a dollar once in  
19 a while.

20 MR. FATTIBENE: Your Honor, I don't relish  
21 this at all.

22 THE COURT: Oh, I have heard a lot of things  
23 in my life and this is one of the mildest.

MR. FATTIBENE: This is something new.

THE COURT: I have tried motion picture



1 cases that have gone up to the Supreme Court.

2 MR. FATTIBENE: I don't get involved in  
3 this type of situation.

4 THE COURT: All right. It is part of my  
5 life.

6 Q Now, Mr. Herschel Dryer, wasn't he an old retired  
7 tailor who had worked for your father for years and really  
8 doesn't even know the name Visa-Therm?

9 A You asked me two questions in one again. Number  
10 one, he is a retired tailor and he has been served with  
11 several documents and he signed papers with the name Visa-  
12 Therm on them, and my assumption would be that he knows the  
13 name Visa-Therm. The man happens to be self-assuming and  
14 quiet but I would not draw the conclusion that he is  
15 ignorant to the point where he would not know the name  
16 Visa-Therm.

17 Q Well, are you aware of the responsibilities of  
18 being an officer and director of the corporation?

19 MR. KUNIN: I object, Your Honor.

20 THE COURT: What difference does it make?  
21 I read these cases from the Court of Appeals that some guys  
22 way out in left field get stuck too.

23 MR. FATTIBENE: Well, that is true, Your  
24 Honor. I will withdraw it.

25 THE COURT: I wonder, is this a fitting

